No. 2789

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United States

Circuit Court of Appeals

For the Ninth Circuit.

NORTH AMERICAN OIL CONSOLIDATED, a Corporation, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

For Appellants:

U. T. CLOTFELTER, Esq., 409 Kerckhoff Building, Los Angeles, California; and

A. L. WEIL, Esq., CHARLES S. WHEELER, Esq., and JOHN F. BOWIE, Esq., Union Trust Building, San Francisco, California;

For Appellees:

ALBERT SCHOONOVER, Esq., United States Attorney, Los Angeles, California;

E. J. JUSTICE, Esq., A. E. CAMPBELL, Esq., and FRANK HALL, Esq., Special Assistants to the United States Attorney General, 214 Postoffice Building, San Francisco, California. [4*]

In the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

No. A–48.

UNITED STATES OF AMERICA,
Plaintiff and Appellee,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFORNIA, PRODUCERS TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,
Defendants and Appellants.

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*Page-number appearing at foot of page of original certified Record.

Citation on Appeal.

United States of America,—ss.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, Ninth Judicial Circuit, to be held at San Francisco, California, on the 1st day of April, 1916, being within thirty days from the date hereof, pursuant to an order allowing an appeal of record in the clerk's office of the District Court of the United States for the Southern District of California, in the suit numbered A–48—Equity in the records of said court, wherein the United States of America is plaintiff and appellee, and among others, North American Oil Consolidated, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles Walter H. Leimert and Wickham Havens are defendants and appellants, to show cause, if any there be, why the interlocutory decree directing the appointment of a receiver, rendered against the said North American Oil Consolidated, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert [5] and Wickham Havens should not be corrected, and why speedy justice should not be done in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States District Judge, this 3d day of March, 1916.

M. T. DOOLING,
Judge. [6]

Due service and receipt of a copy of the within Citation on Appeal this 3 day of March, 1916, is hereby admitted.

E. J. JUSTICE,
Attorney for Plf.
J.W.W.

[Endorsed]: No. A–48. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Plaintiff and Appellee, vs. North American Oil Consolidated, et al., Defendants and Appellants. Citation. Filed Mar. 4, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [7]

In the District Court of the United States, in and for the Southern District of California, Northern Division.

IN EQUITY—No. A–48.

THE UNITED STATES OF AMERICA,
Complainants,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFORNIA, PRODUCERS TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,
Defendants. [8]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. A–48—Eq.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFORNIA, PRODUCERS TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,

Defendants.

Bill of Complaint.

To the Judges of the District Court of the United States for the Southern District of California, Sitting Within and for the Northern Division of Said District:

The United States of America, by Thomas W. Gregory, its Attorney General, presents this its Bill in Equity, against North American Oil Consolidated, Pioneer Midway Oil Company, Union Oil Company of California, Producers Transportation Company, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens, (citizens and residents, respectively, as stated in the next succeeding paragraph

of this Bill), and for cause of complaint alleges:

I.

Each of the defendants, North American Oil Consolidated, Pioneer Midway Oil Company, Union Oil Company of [9] California and Producers Transportation Company, is, and at all the times hereinafter mentioned as to it was, a corporation, organized under the laws of the state of California. The Defendants, Walter P. Frick, John F. Carlston, *Daniel* Searles, Walter H. Leimert and Wickham Havens, are residents and citizens of the State and Northern District of California, and the defendant, Clarence J. Berry, is a citizen and resident of the State and Southern District of California.

II.

For a long time prior to and on the 27th day of September, 1909, and at all times since said date, the plaintiff has been and now is the owner and entitled to the possession of the following described petroleum, or mineral oil, and gas lands, to wit:

All of Section Two (2), Township Thirty-two (32) South of Range Twenty-three (23) East, Mount Diablo Base and Meridian,

and of the oil, petroleum, gas, and all other minerals contained in said land.

III.

On the 27th day of September, 1909, the President of the United States, acting by and through the Secretary of the Interior, and under the authority legally invested in him so to do, duly and regularly withdrew and reserved all of the land hereinbefore particularly described (together with other lands)

from mineral exploration, and from all forms of location or settlement, selection, filing, entry, patent, occupation, or disposal, under the mineral and non-mineral land laws of the United States, and since said last-named date none of said lands have been [10] subject to exploration for mineral oil, petroleum, or gas, occupation or the institution of any right under the public land laws of the United States.

IV.

Notwithstanding the premises, and in violation of the proprietary and other rights of this plaintiff, and in violation of the laws of the United States and lawful orders and proclamations of the president of the United States, and particularly in violation of the said order of withdrawal of the 27th of September, 1909, the defendants herein, to wit; North American Oil Consolidated, Pioneer Midway Oil Company, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens, entered upon the said land hereinbefore particularly described, long subsequent to the 27th day of September, 1909, for the purpose of exploring said land for petroleum and gas.

V.

Said defendants, North American Oil Consolidated, Pioneer Midway Oil Company, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens, had not discovered petroleum, gas, or other minerals on said land on or before the 27th day of September, 1909, and had acquired no rights on, or with

respect to, said land, on or prior to said date.

VI.

Long after the said order of withdrawal of September 27, 1909, to wit, some time about the month of August, in the year 1910, as plaintiff is informed and believes, [11] there was first produced minerals, to wit, petroleum and gas, on or from said land and the defendants North American Oil Consolidated, Pioneer Midway Oil Company, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens, have produced and caused to be produced therefrom large quantities of petroleum and gas, but the exact amount so produced plaintiff is unable to state. Of the petroleum and gas so produced large quantities thereof have been sold and delivered by the said defendants, North American Oil Consolidated, Pioneer Midway Oil Company, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens, to the Producers Transportation Company and to the Union Oil Company of California, and the said defendants, North American Oil Consolidated, Pioneer Midway Oil Company, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens, have sold and disposed of oil and gas produced from said land to others to plaintiff unknown. Plaintiff does not know, and is therefore unable to state the amount of petroleum and gas which defendants, North American Oil Consolidated, Pioneer Midway Oil Company, Walter P. Frick, John F.

Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens, have extracted from said land and sold, nor the amount extracted and now remaining undisposed of; nor the price received for such oil and gas as has been sold, and has no means of ascertaining the facts in the premises, except from said defendants, North American Oil Consolidated, Pioneer Midway Oil Company, Walter P. Frick, John F. Carlston, Clarence [12] J. Berry, Dennis Searles, Walter H. Leimert, Wickham Havens, Producers Transportation Company and Union Oil Company of California, and therefore a full discovery from said defendants is sought herein.

VII.

The defendants, North American Oil Consolidated, Pioneer Midway Oil Company, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens, are now extracting oil and gas from said land, drilling oil and gas wells, and otherwise trespassing upon said land and asserting claims thereto, and if they continue to produce oil and gas therefrom it will be taken and wrongfully sold and converted, and various other trespasses and waste will be committed upon said land to the irreparable injury of complainant, and will interfere with the policies of complainant with respect to the conservation, use and disposition of said land, and particularly the petroleum, oil and gas contained therein.

VIII.

Each of the defendants claims some right, title

or interest in said land, or some part thereof, or in the oil, petroleum, or gas extracted therefrom, or in or to the proceeds arising from the sale thereof, or through and by purchase thereof, and each of said claims is predicated upon or derived directly or mediately from some pretended notice or notices of mining locations, and by conveyances, contracts, or liens, directly or mediately, from said such pretended locators. But none of such location notices and claims are valid against complainant, and no rights have accrued to the defendants, or either **[13]** of them, thereunder, either directly or mediately; nor have any minerals been discovered or produced on said land except as hereinbefore stated; but said claims so asserted cast a cloud upon the title of the complainant, and wrongfully interfere with its operation and disposition of said land, to the great and irreparable injury of complainant; and the complainant is without redress or adequate remedy save by this suit, and this suit is necessary to avoid a multiplicity of actions.

IX.

Neither of the defendants, nor any person or corporation from whom they have derived any alleged interest was, at the date of said order of withdrawal of September 27, 1909, nor was any other person at such date a bona fide occupant or claimant of said land and in the diligent prosecution of work leading to the discovery of oil or gas.

X.

Except as in this bill stated, the plaintiff has no other knowledge or information concerning the

nature of any other claims asserted by the defendants herein, or any of them, and therefore leaves said defendants to set forth their respective claims of interest.

In that behalf the plaintiff alleges that, because of the premises of this bill, none of the defendants have or ever had any right, title or interest in or to, or lien upon said land, or any part thereof, or any right, title or interest in or to the petroleum, mineral oil, or gas deposited therein, or any right to extract the petroleum or mineral oil or gas from said land, or to convey or dispose of the petroleum and gas so extracted, or any part thereof; on the contrary, the acts of those **[14]** defendants who have entered upon said land and drilled oil wells, and used and appropriated the petroleum and gas deposited therein, and assumed to sell and convey any interest in or to any part of said land, were all in violation of the laws of the United States and the aforesaid order withdrawing and reserving said land, and all of said acts were and are in violation of the rights of the plaintiff, and such acts interfere with the execution by complainant of its public policies with respect to said land.

XI

The present value of said land hereinbefore described exceeds Three Hundred Thousand Dollars ($300,000).

In consideration of the premises thus exhibited, and inasmuch as plaintiff is without full and adequate remedy in the premises, save in a court of equity where matters of this nature are properly

cognizable and relievable, plaintiff prays:

1. That said defendants, and each of them, may be required to make full, true and direct answer respectively to all and singular the matters and things hereinbefore stated and charged, and to fully disclose and state their claims to said land hereinbefore described, and to any and all parts thereof, as fully and particularly as if they had been particularly interrogated thereunto, but not under oath, answer under oath being hereby expressly waived;

2. That the said land may be declared by this Court to have been at all times from and after the 27th day of September, 1909, lawfully withdrawn from mineral [15] exploration and from all forms of location, settlement, selection, filing, entry or disposal under the mineral or nonmineral public land laws of the United States; and that the said location notices were fraudulently filed, and the said defendants did not acquire any right thereunder;

3. That said defendants, and each of them, may be adjudged and decreed to have no estate, right, title, interest or claim in or to said land, or any part thereof, or in or to any mineral or minerals or mineral deposits contained in or under said land, or any part thereof; and that all and singular of said land, together with all of the minerals and mineral deposits, including mineral-oil, petroleum and gas therein or thereunder contained, may be adjudged and decreed to be the perfect property of this plaintiff, free and clear of the claims of said defendants, and each and every one of them;

4. That each and all of the defendants herein,

their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from asserting or claiming any right, title, interest, claim or lien in or to the said land, or any part thereof, or in or to any of the minerals, or mineral deposits therein or thereunder contained; and that each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from going upon any part or portion of said land, and from in any manner using any of said land and premises, and from in any manner extracting, [16] removing or using any of the minerals deposited in or under said land and premises, or any part or portion thereof, or any of the other natural products thereof, and from in any manner committing any trespass or waste upon any of said land or with reference to any of the minerals deposited therein or thereunder, or any of the other natural products thereof;

5. That an accounting may be had by said defendants, and each and every one of them, wherein said defendants, and each of them, shall make a full, complete, itemized and correct disclosure of the quantity of minerals (and particularly petroleum) removed or extracted, or received by them, or either of them, from said land, or any part thereof, and of any and all moneys or other property or thing of value received from the sale or disposition of any and all minerals extracted from said land, or any part thereof, and of all rents and profits re-

ceived under any sale, lease, transfer, conveyance, contract, or agreement, concerning said land, or any part thereof; and that the plaintiff may recover from said defendants, respectively, all damages sustained by the plaintiff in these premises;

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, derricks, drills, pumps, storage vats, pipes, pipe-lines, shops, houses, machinery, tools and appliances of every character whatsoever thereon, belonging to or in the possession of said defendants, or any of them, which have been used or now are being used in the extraction, storage, transportation, refining, sale, manufacture, or [17] in any other manner in the production of petroleum or petroleum products or other minerals from said land, or any part thereof, for the purpose of continuing, and with full power and authority to continue the operations on said land in the production and sale of petroleum and other minerals when such course is necessary to protect the property of the complainant against injury and waste, and for the preservation, protection and use of the oil and gas in said land, and the wells, derricks, pumps, tanks, storage vats, pipes, pipe-lines, houses, shops, tools, machinery, and appliances being used by the defendants, their officers, agents or assigns, in the production, transportation, manufacture, or sale of petroleum or other minerals from said land, or any part thereof, and that such receiver may have the usual and general powers vested in receivers of courts of chancery.

7. That the plaintiff may have such other and

further relief as in equity may seem just and proper.

To the end therefore that this plaintiff may obtain the relief to which it is justly entitled in the premises, may it please Your Honors to grant unto the plaintiff a writ or writs of subpoena, issued by and under the seal of this Honorable Court directed to said defendants herein, to wit, North American Oil Consolidated, Pioneer Midway Oil Company, Union Oil Company of California, Producers Transportation Company, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens, therein and thereby commanding them, and each of them, at a certain time, and under a certain penalty therein to be named, to be and appear [18] before this Honorable Court, and then and there, severally, full, true and direct answers make to all and singular the premises, but not under oath, answer under oath being hereby expressly waived, and stand to perform and abide by such order, direction and decree as may be made against them, or any of them, in the premises, and as shall be meet and agreeable to equity.

THOMAS W. GREGORY,
Attorney General of the United States.
ALBERT SCHOONOVER,
United States District Attorney.
E. J. JUSTICE,
Special Assistant to the Attorney General.
A. E. CAMPBELL,
Special Assistant to the Attorney General.
FRANK HALL,
Special Assistant to the Attorney General.

[19]

United States of America,
Southern District of California,—ss.

J. D. Yelverton, being first duly sworn, deposes and says:

He is now and has been since the 1st day of March, 1913, Chief of Field Service of the General Land Office of the United States, and since the 1st day of July, 1915, has been also in direct charge of the San Francisco office of the Field Division of the General Land Office, and much of his official work has been done in the investigations of facts relating to the lands withdrawn by the president as oil lands, and especially the lands withdrawn by order of September 27, 1909, and by the order of July 2, 1910. That from examination of such lands, and the facts in relation thereto by special agents acting under his direction as such chief of Field Service, and from examination of the records of the General Land Office, and the local land offices of the complainant in said State of California, and particularly from the detailed reports of the Field Agents, and accompanying affidavits setting forth the facts, he is informed as to the matters and things stated in the foregoing complaint with reference to the particular lands therein described; and the matters therein stated are true, except as to such matters as are stated to be on information and belief, and as to these, affiant, after investigation, states he believes them to be true.

J. D. YELVERTON.

Subscribed and sworn to before me, this 5th day of November, 1915.

[Seal] T. L. BALDWIN,

Deputy Clerk U. S. District Court, Northern District of California. **[20]**

[Endorsed]: Northern Division. No. A–48—Eq. In the District Court of the United States for the Southern District of California, Northern Division. United States of America, Plaintiff, vs. North American Oil Consolidated, et al., Defendants. Bill of Complaint. Filed Nov. 6, 1915. Wm. M. Van Dyke, Clerk. T. F. Green, Deputy. **[21]**

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. A–48.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED et al.,

Defendants.

Answer of North American Oil Consolidated, Walter P. Frick, John F. Carlston, Dennis Searles, Walter H. Leimert, Wickham Havens, and Clarence J. Berry.

COMES NOW the North American Oil Consolidated, Walter P. Frick, John F. Carlston, Dennis Searles, Walter H. Leimert, Wickham Havens and

Clarence J. Berry, defendants named in the above entitled and numbered suit, and answer the bill of complaint on file therein as follows:

First Defense.

As and for their first defense to the cause of action set forth in said bill of complaint, said defendants move the Court for an order transferring said suit to the law side and calender of the above-entitled court for trial and final disposition. [22]

Said motion is made and based upon the ground that upon the allegtions of the bill of complaint and from the prayer thereof it appears that said suit is one in ejectment brought by the plaintiff out of possession against the defendants in possession of the lands described in the bill of complaint and for damages for past trespasses both subjects of litigation over which a court of equity has no jurisdiction, said defendants have a right to trial by jury, and upon which the plaintiff has full, complete, speedy and adequate remedy in a court of law.

Said motion will be made and based upon the pleadings, records and files in the above-entitled and numbered suit.

Second Defense.

As and for their second defense to the cause of action set forth in the bill of complaint on file in the above entitled and numbered suit, this defendant moves the court for an order striking out of said complaint the portions thereof following:

1. That portion of paragraph VI, beginning with the words "Plaintiff does not know" and ending with the words "is sought herein."

2. All of paragraph VII.

3. That part of paragraph VIII which reads as follows: "And wrongfully interfered with its operation and disposition of said land to the great and irreparable injury of complainant; and the complainant is without redress or adequate remedy save by this suit, and this suit [23] is necessary to avoid a multiplicity of actions."

4. That part of paragraph X following: "And such acts interfere with the execution by complainant of its public policies with respect to said lands."

5. All of paragraph XI.

6. That portion of the bill of complaint following paragraph XI which reads: "And inasmuch as complainant is without full and adequate remedy in the premises, save in a court of equity where matters of this nature are properly cognizable and relievable."

7. All of paragraphs 4, 5 and 6 of the prayer of said bill of complaint.

Said motion will be made and based upon the ground that the portions of the bill of complaint above specified are and constitute scandalous and impertinent matter inserted in the bill of complaint and are redundant and surplusage.

Said motion will be made and based upon the pleadings, records and files in the above-entitled and numbered suit.

THIRD DEFENSE.

As and for their third defense to the cause of action set forth in the bill of complaint on file in the above-entitled and numbered suit, these defendants allege that the above-entitled court sitting as a

court of equity has no jurisdiction of the subject matter of said suit for that the allegations of the bill of complaint [24] show that the main case made thereby and the chief object and purpose of the suit is to try the question of title to the land as between the plaintiff out of possession and the defendant in possession of the land described in the bill of complaint; to secure possession thereof from the defendants; and a judgment for damages for alleged trespasses, all subjects without the jurisdiction of the court of equity and upon which plaintiff has full, adequate, speedy and complete remedy and relief in a court of law.

Fourth Defense.

As and for their fourth defense to the cause of action set forth in the bill of complaint on file in the above-entitled action, said defendants allege:

That on the 8th day of January, 1907, the land described in said bill of complaint was public mineral land of the United States open and subject to location and purchase under the laws of the United States relating to the sale and disposition of lands commonly known as placers, and on said date I. Strassburger, L. Strassburger, B. S. Lederman, G. S. Neustadter, E. L. S. Wrampelmeier, T. J. Wrampelmeier, L. A. Wrampelmeier and F. E. Wrampelmeier, each being then a citizen of the United States and all being theretofore associated together for the purpose of acquiring title to oil lands of the county of Kern, State of California, duly located said land under said laws by and through four placer locations as follows:

Lots 1 and 2 and the south half of the northwest

quarter of said section 2 as the Banter No. 1 Placer Mining Claim. [25]

Lots 1 and 2 and the south half of the northeast quarter of said section as the Banter No. 2 Placer Mining Claim;

The southeast quarter of said section as Banter No. 3 Placer Mining Claim; and

The southwest quarter of said section as Banta No. 4 Placer Mining Claim.

Notice of location of said placer mining claims were duly recorded in Book 66 of Mining Records, pages 59, 60 and 61, respectively, records of Kern County, California.

That thereafter and by mesne conveyances all of the right, title and interest of said locators in and to said land and the whole thereof became vested in defendants J. F. Carlston, Wickham Havens, Walter H. Leimert, Clarence J. Berry, and Walter P. Frick, and said defendants were at the time of the filing of said bill of complaint and now are and for a long time prior to said date had been the owners of said land and the whole thereof and they and their predecessors in interest have held and claimed said land ever since the location thereof as aforesaid, openly and notoriously and during said time the said land has been worked and developed for its minerals.

That on September 27, 1909, and for a long time prior thereto and ever since said time said defendants last above named were *bona fide* occupants and claimants of said land and the whole thereof in the diligent prosecution of work leading to a discovery

of oil or gas and that such work was and has been diligently continued.

That the North American Oil Consolidated, one of the defendants above named, has and claims an interest in said land, and the whole thereof, under and by virtue [26] of contract of sale between it and said persons last above named, defendants herein, which said contract was made, executed and delivered on July 14, 1913.

Fifth Defense.

As and for a fifth defense to the bill of complaint on file in the above-entitled action, these defendants allege:

That in the development of the land described in said bill of complaint there has been expended many thousands of dollars by these defendants and their predesessors in interest, and the said development work has extended over and been carried on diligently during a period of more than five years last past, all in strict conformity with the rules, regulations, customs and interpretations of the mining laws of the United States that have been in existence and acquiesced in by the plaintiff herein and its Congress and the Department of the Interior and for more than forty years prior to the filing of the bill of complaint herein; that said work of development was also in conformity with a policy of the plaintiff that had been well settled and acted upon for a like period of time; that the large amount of time and money aforesaid was expended in good faith and for the purpose of honestly acquiring title to the land stated and also upon the faith of said long existent rules,

customs, regulations and policies and upon the belief that plaintiff would not suddenly, as it now has, by the filing of this suit, reverse the same, to the irreparable injury of these defendants.

That the doing of said work of development and the expenditure of time and money in connection therewith [27] was at all the times with the full knowledge of this plaintiff by and through examinations of said land and of the things being done thereon made at various times by the agents of the Department of the Interior and reports thereof by said agents to said department, but notwithstanding such knowledge, this plaintiff made no objection whatever at any time prior to the filing of said bill of complaint to the claim of title to said land by said defendants, J. F. Carlston, Wickham Havens, Walter H. Leimert, Walter P. Frick and Clarence J. Berry and those claiming by, through or under them, or to the possession, occupation and working thereof by said persons or any of them, or of their predecessors in interest, until the filing of said bill of complaint, and on account of such failure on the part of this plaintiff to make objections as aforesaid these defendants and their predecessors in interest were warranted in believing and did believe that the plaintiff did not and would not object to the use and occupation of said land or the claim of title thereto aforesaid, or the extraction and use of minerals therefrom and said expenditures of money and time were made in full reliance upon such belief.

That by reason of the matters and things in this defense alleged, these defendants, allege, assert and

insist that the plaintiff is estopped from now claiming that it is entitled to the possession of said land or any part thereof, or of the mineral therein, or which has been produced therefrom or any part thereof, and that said plaintiff is guilty of laches in the institution of this suit and in objection to the rights and title of these defendants and ought not now in all equity and good conscience to be heard to assert any claim or right to [28] dispossess these defendants or any of them or to assert any claim or right of title to any part of the mineral therein or heretofore extracted therefrom.

Sixth Defense.

Without waiving, but on the contrary expressly reserving the full benefit of each of the defenses hereinbefore set forth, these defendants as and for their sixth defense to the cause of action set forth in the bill of complaint on file in the above-entitled suit, admit, deny and allege as follows:

I.

Admit the allegations of paragraph I of said bill of complaint.

II.

Deny that the plaintiff at any of the times mentioned in paragraph II of said bill of complaint has been or now is the owner or entitled to the possession of the land described in said paragraph II or of any part thereof, or of the oil, petroleum, gas or any other mineral contained in said land, except subject to the right, title and interest therein of these defendants.

On the contrary these defendants allege that at

the time of the filing of said bill of complaint and for a long time prior thereto these defendants were in the possession of said land and rightfully entitled to hold possession thereof and to extract and dispose of the minerals therein contained for their use and benefit by virtue of compliance and in good faith by their predecessors in interest and these defendants with the laws of the United States relating to the sale and disposition [29] of its mineral lands and also by virtue of the act of Congress of June 25, 1910 (36 Stats. at L. 847).

III.

Admits that on September 27, 1909, the President of the United States, acting by and through the Secretary of the Interior, issued an order temporarily withdrawing from location, selection, settlement, filing, entry, patent or occupation under the mineral or nonmineral public land laws the land, among others, described in paragraph II of said bill of complaint, but denies that said order withdrew said land or any part thereof from mineral occupation, or exploration; denies that since September 27, 1909, none of said lands have been subject to exploration for mineral, oil, petroleum or gas, or to occupation or to the institution of any right thereto under the public land laws of the United States.

On the contrary these defendants allege that as to the lands described in paragraph II of said bill of complaint, these defendants were at the time of the filing of said bill of complaint and for a long time prior thereto authorized by the provisions of said act of Congress approved June 25, 1910, to continue

in the occupation of said land and in its exploration and development for petroleum or gas or any other minerals therein contained for that by the terms of said Act of Congress whatever force or effect said order of withdrawal of September 27, 1909, had as to said land described in said paragraph II was vacated and made null and void.

IV.

Deny that these defendants or either of them [30] entered upon the land referred to in paragraph IV of said bill of complaint long or at any other time subsequent to September 27, 1909, for the purpose of exploring said land for petroleum or gas.

On the contrary these defendants allege that they and their predecessors in interest entered upon said land for said purpose long prior to September 27, 1909, and on said date these defendants were *bona fide* occupants and claimants of said land in the diligent prosecution of work leading to a discovery of oil or gas and thereafter continued in diligent prosecution of said work until the discovery on said land of petroleum therein.

Denies that any entry upon said land by these defendants or either of them was in violation of any proprietary or other right of the plaintiff or in violation of the laws of the United States or the lawful orders or proclamations of the President of the United States or in violation of said order of withdrawal of September 27, 1909.

V.

Deny that a discovery of petroleum, gas or other mineral was not made upon said land described in

paragraph II of said bill of complaint on or before September 27, 1909, and deny that these defendants or their predecessors in interest had acquired no rights on or with respect to said land on or prior to said date.

VI.

Deny that mineral was first produced upon said land some time about the month of August in the year 1910, or long after the said order of withdrawal of September 27, 1909. [31]

Admit that these defendants have produced petroleum from said land and have sold and disposed of the same but at this time are unable to state precisely the total amount thereof and what part of such amount has been sold to the various purchasers thereof.

Allege that these defendants are willing to make a complete statement thereof but are unable to do so at the time of the preparation and filing of this answer.

VII.

Admit that the defendant, North American Oil Consolidated, is now extracting oil from said land and drilling oil or gas wells thereon, but deny that the doing of these things is a trespass upon said land or that they are in any wise trespassing thereon; or that oil or mineral will be taken by said defendants or either of these defendants from said land and wrongfuly sold or converted; deny that various or any trespass or waste will be committed upon said land if these defendants or either of them continue to procure oil or gas therefrom or that such acts will

be to the irreparable or other injury of the complainant.

Deny that anything being done upon said land by these defendants or either of them will in any way interfere with the policies of the complainant mentioned in paragraph VII of said bill of complaint.

VIII.

Admit that these defendants claim a right, title and interest in the land described in paragraph II of said bill of complaint and the whole thereof and in and to the oil, petroleum and gas therein and in [32] that heretofore extracted therefrom and in and to the proceeds arising from the sale thereof.

Admit that said claims of these defendants are predicated upon and derived from notices of location of mining claims and by conveyance from the locators thereof to these defendants but deny that said notices of location or said mining claims are pretended notices or mining claims or that the locators of said mining claims were pretended locators.

Deny that said location notices and mining claims or either of them are invalid against this plaintiff and deny that no rights have accrued to these defendants or either of them thereunder directly or mediately; deny that any minerals have been discovered or produced on said land except as in said bill of complaint stated; deny that said claims of these defendants cast a cloud upon the title of complainant or wrongfully interfere with its operation or disposition of said land to its great or other or irreparable or any injury; deny that complainant is without redress or adequate remedy save by this suit

or that this suit is necessary to avoid a multiplicity of actions.

On the contrary these defendants allege that a suit in ejectment with damages for withholding possession would afford this plaintiff full, complete, speedy and adequate relief in the premises.

IX.

Deny that neither of these defendants nor any person or corporation from whom they have derived their interest in said land was at the date of said order of [33] withdrawal of September 27, 1909, a *bona fide* occupant or claimant of said land or in the diligent prosecution of work leading to a discovery of oil or gas.

X.

Deny that because of the premises in said bill of complaint none of these defendants have or ever had any right, title or interest in or to said land or any part thereof or any right, title or interest in or to the petroleum, mineral, oil or gas deposit therein, or any right to extract the same from said land or to convey or dispose of the same or any part thereof; deny that the acts of these defendants or either of them who have entered upon said land or drilled oil wells or used or appropriated petroleum or gas deposited therein or assumed to sell or convey any interest in or to any part of said land were all or any part in violation of the laws of the United States or of the aforesaid order withdrawing said lands; deny that all or any of said acts were or are in violation of the rights of the plaintiff or that such acts interfere with the execution by complainant of its public

policies with respect to said land.

XI.

Admit the allegations of paragraph XI of said bill of complaint.

Seventh Defense.

As their further separate and seventh defense to the cause of action set forth in the said bill of complaint, these defendants allege:

That ever since January 8, 1907, these defendants and their predecessors in interest have held and [34] possessed the lands described in said bill of complaint and the whole thereof under claim of right thereto, openly, notoriously, continuously and adversely, and during said time taxes have been levied and assessed thereof and paid by these defendants and their predecessors in interest; that during said time these defendants and their predecessors in interest have worked said land and developed the same for petroleum and gas therein contained and in said work there has been expended upon said land large sums of money of which a considerable part was expended prior to September 27, 1909; that during said time the plaintiff has levied and assessed an income tax upon proceeds derived from the mineral obtained from said land, which said income tax has been paid by these defendants.

WHEREFORE these defendants having fully answered said bill of complaint, pray that plaintiff take nothing in this case against them and that the defendants be hence dismissed with their costs of suit and that they be awarded such other and fur-

ther relief as may appear to be just and equitable.

U. T. CLOTFELTER,
A. L. WEIL,

Solicitors for Defendants North American Oil Consolidated, Walter P. Frick, John F. Carlston, Dennis Searles, Walter H. Leimert, Wickham Havens, and Clarence J. Berry. [35]

[Endorsed]: In Equity. No. A–48. Dept. —— In the District Court of the United States, Southern District of California, Northern Division, Ninth Circuit. United States of America, Plaintiff, v. North American Oil Consolidated et al., Defendant. Answer of North American Oil Consolidated et al. Filed Dec. 2, 1915. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Received Copy of the Within Answer, this 2d day of December, 1915. Albert Schoonover, U. S. Atty., By M. L., Attorney for Plaintiff. U. T. Clotfelter, A. L. Weil, 409 Kerckhoff Building, Los Angeles, California, Telephone Main 2980. Attorneys for Defendants Named Herein. [36]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

In EQUITY—A–48.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY,

UNION OIL COMPANY OF CALIFORNIA, PRODUCER'S TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN T. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,

Defendants.

Notice of Motion for Restraining Order and Receiver.

To North American Oil Consolidated, Pioneer Midway Oil Company, Union Oil Company of California, Producer's Transportation Company, Walter P. Frick, John T. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens:

You, and each of you, will take notice that the plaintiff, the United States of America, will move before the United States District Court for the Southern District of California, and the Judge thereof, M. T. Dooling, United States District Judge, at the courtroom of the said court, in the Federal Building at Los Angeles, California, on the 30th day of November, 1915, at 10 o'clock, A. M., in the above-entitled cause, for the granting of an order restraining you, and each of you, your officers, agents, servants, and attorneys, from taking or moving from the said premises [37] described in the Bill of Complaint herein, any of the mineral oil or petroleum deposited therein, or any of the gas in or under said land, and from committing in any manner any trespass or waste upon any of said land, or with

reference to any of the minerals deposited therein, pending the disposition of the said cause or the further order of this Court.

And you, and each of you, will further take notice that the plaintiff, the United States of America, will then and there move the said Court and the Judge thereof in the above-entitled cause for the granting of an order appointing a receiver for the property described in the Bill of Complaint herein, and operated by you, and each of you, and for the oil and petroleum heretofore extracted from said land, to be dealt with by the receiver in such manner as to the Court may seem proper.

The above motions will be submitted upon the verified Bill of Complaint on file herein, affidavits, records, documents, and oral testimony.

This, the 23d day of November, 1915.

E. J. JUSTICE,
FRANK HALL,

Solicitors for the Plaintiff, United States of America. [38]

A–48.

Return on Service of Writ.

United States of America,
Southern District of California,—ss.

I hereby certify and return that I served the annexed Notice of Motion for Restraining Order and Receiver on the therein-named Union Oil Company of California, Producer's Transportation Co., by handing to and leaving a true and correct copy thereof with the clerk in the offices of the above-

named personally at Los Angeles, California, in said District on the 24th day of November, A. D., 1915.

C. T. WALTON,
U. S. Marshal,
By F. G. Thompson,
Deputy.

[Endorsed]: No. A–48. In the District Court of the United States for the Southern District of California. United States of America, Plaintiff, vs. North American Oil Consolidated, et al., Defendants. Notice of Motion for Restraining Order and Receiver. Filed Dec. 1, 1915. Wm. M. Van Dyke, Clerk. T. F. Green, Deputy. [39]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—A–48.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFORNIA, PRODUCER'S TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN T. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,
Defendants.

Notice of Motion for Restraining Order and Receiver.

To North American Oil Consolidated, Pioneer Midway Oil Company, Union Oil Company of California, Producer's Transportation Company, Walter P. Frick, John T. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert, and Wickham Havens:

You, and each of you, will take notice that the plaintiff, the United States of America, will move before the United States District Court for the Southern District of California, and the Judge thereof, M. T. Dooling, United States District Judge, at the courtroom of said Court, in the Federal Building, at Los Angeles, California, on the 30th day of November, 1915, at 10 o'clock, A. M., in the above-entitled cause, for the granting of an order restraining you, and each of you, your officers, agents, servants, and attorneys from taking or moving from the said premises described in the Bill of Complaint herein, [40] any of the mineral oil or petroleum deposited therein, or any of the gas in or under said land, and from committing in any manner any trespass or waste upon any of said land, or with reference to any of the minerals deposited therein, pending the disposition of the said cause or the further order of this Court.

And you, and each of you, will further take notice that the plaintiff, the United States of America, will then and there move the said Court and the Judge thereof in the above-entitled cause for the granting

of an order appointing a receiver for the property described in the Bill of Complaint herein, and operated by you, and each of you, and for the oil and petroleum heretofore extracted from said land, to be dealt with by the receiver in such manner as to the Court may seem proper.

The above motions will be submitted upon the verified Bill of Complaint on file herein, affidavits, records, documents and oral testimony.

This, the 23d day of November, 1915.

E. J. JUSTICE,
A. E. CAMPBELL,
FRANK HALL,

Solicitors for the Plaintiff, United States of America. [41]

Northern District of California,—ss.

I hereby certify and return, that on the 24th day of Nov. 1915, I received the within writ, and that after diligent search, I am unable to find the within named defendants, Walter P. Frick, within my district.

J. B. HOLOHAN,
United States Marshal,
By Thos. F. Mulhall,
Deputy United States Marshal.

Return on Service of Writ.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Notice of Motion for Restraining Order, etc., on the therein-named Joseph F. Carlston, Wickham Havens, Dennis Searles, and Walter H. Leimert, by

handing to and leaving a true and correct copy thereof with Joseph F. Carlston, Wickham Havens, Dennis Searles, and Walter H. Leimert, personally at Oakland, California, in said District on the 24th day of November, A. D., 1915.

J. B. HOLOHAN,
U. S. Marshal,
By Thos. F. Mulhall,
Office Deputy. [42]

Return on Service of Writ.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Notice of Motion for Restraining Order, etc., on the therein-named North American Oil Consolidated and Pioneer Midway Oil Company, by handing to and leaving a true and correct copy thereof with C. F. Nance, Secretary of North American Oil Consolidated, and Miss A. E. Cole, Secty., Pioneer Midway Oil Company, personally at San Francisco, California, in said District, on the 24th day of November, A. D., 1915.

J. B. HOLOHAN,
U. S. Marshal,
By Lawrence J. Conlon,
Office Deputy.

[Endorsed]: No. A–48. In the District Court of the United States for the Southern District of California. United States of America, Plaintiff, vs. North American Oil Consolidated, et al., Defendants. Notice of Motion for Restraining Order and Re-

ceiver. Filed Dec. 6, 1915. Wm. M. Van Dyke, Clerk. By T. F. Green, Deputy Clerk. [43]

[Order Granting Application for Appointment of Receiver, etc.]

In the District Court of the United States, for the Southern District of California, Northern Division.

No. A–48—EQUITY.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED, et al.,
Defendants.

ALBERT SCHOONOVER, Esq., United States Attorney, E. J. JUSTICE, Esq., FRANK HALL, Esq., and A. E. CAMPBELL, Esq., Special Assistants to the Attorney General, Attorneys for the Plaintiff.

ANDREWS, TOLAND & ANDREWS, Attorneys for Union Oil Co. and Producers Transportation Co., CHARLES S. WHEELER, Esq., JOHN F. BOWIE, Esq., and A. L. WEIL, Esq., Attorneys for North American Oil Consolidated. J. D. LEDERMAN, Esq., Attorney for Pioneer Midway Oil Co.

For the reasons given in U. S. vs. Consolidated Midway Oil Co. et al., No. A–2—Equity and U. S. vs.

Thirty Two Oil Co., et al., No. A–38—Equity, this day decided, the application for the appointment of a receiver is granted, and the motions to transfer to the law side, to dismiss, to strike out and for further and better particulars are denied.

February 1st, 1916.

M. T. DOOLING,
Judge. [44]

[Endorsed]: No. A–48—Equity. U. S. District Court, Southern District of California, Northern Division. The United States of America, Plaintiff, vs. North American Oil Consolidated et al., Defendants. Order granting application for appointment of receiver, and denying motions to transfer to law side, to dismiss, to strike out and for further and better particulars. Filed Feb. 3, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [45]

Opinion.

In the District Court of the United States, for the Southern District of California, Northern Division.

No. A–2—EQUITY.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

CONSOLIDATED MIDWAY OIL CO., et al.,
Defendants.

ALBERT SCHOONOVER, Esq., United States Attorney, E. J. JUSTICE, Esq., A. E. CAMPBELL, Esq., and FRANK HALL, Esq., Special Assistants to the Attorney General, Attorneys for the Plaintiff.

GEO. E. WHITAKER, Esq., Attorney for *Midnight*. Oil Co., Edith F. Coons and National Pacific Oil Co., M. S. PLATZ, Esq., Attorney for Mary F. Francis., HUNSAKER & BRITT, Attorneys for Citizens National Bank., L. C. GATES, Esq., Attorney for Title, Insurance & Trust Co., FLINT & JUTTEN, Attorneys for California National Supply Co., OSCAR LAWLER, Esq., Attorney for Four Investment Co., PILLSBURY, MADISON & SUTRO, Attorneys for Standard Oil Co., J. P. SWEENEY, Esq., Attorney for Maricopa Oil Co.

As in a number of other cases submitted at the same time, a motion is presented to transfer this case from the equity to the law side of the Court. The several grounds of the motion fall generally under one of the following heads:

1. That a plain, adequate and complete remedy may be had at law in an action in ejectment. [46]

2. That the present action is in effect one in ejectment and must be tried on the law side where the parties are entitled to a jury trial.

My conclusions as to these contentions, which a press of other matters do not afford me time to do more than state without elaboration, are as follows:

1. That ejectment does not afford a plain, adequate and complete remedy for the matters complained of in the bill of complaint herein.

2. That neither in form nor in substance is the action one in ejectment. Its purpose is the prevention of waste,—to restrain the defendants from withdrawing the oil from the lands in question. All other matters embraced in the bill are subordinate to this. When the defendants, by maintaining derricks and other structures on the lands, retain such posession as they may have acquired as against the Government, is of minor importance under the averments of the bill, so long as they do not destroy the real value and substance of the lands by withdrawing the oil therefrom before their right to do so shall have been finally determined.

It is not upon this motion decided whether such right should be finally determined by the Land Department or by the Court.

The motion to transfer is therefore denied. The motions to dismiss, to make more certain and to strike out are also denied.

February 1st, 1916.

M. T. DOOLING,
Judge. [47]

[Endorsed]: No. A–2–Equity. U. S. District Court, Southern District of California, Northern Division. The United States of America, Plaintiff, vs. Consolidated Midway Oil Co. et al., Defendant. Opinion and order denying motion to transfer to law side, to dismiss, to make more certain and to strike

out. Filed Feb. 3, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [48]

[Opinion.]

In the District Court of the United States, for the Southern District of California, Northern Division.

No. A–38—EQUITY.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THIRTY–TWO OIL CO. et al.,

Defendants.

ALBERT SCHOONOVER, Esq., United States Attorney, E. J. JUSTICE, Esq., A. E. CAMPBELL, Esq., and FRANK HALL, Esq., Special Assistants to the Attorney General, Attorneys for the Plaintiff.

EDMUND TAUSZKY, Esq., Attorney for Associated Oil Co., HUNSAKER & BRITT, Attorneys for Thirty-Two Oil Co., and J. M. *McLEAD,* OSCAR LAWLER, Esq., Attorney for Buick Oil Co., GEO. E. WHITAKER, Esq., Attorney for California Midway Oil Co.

As in a number of other cases submitted at the same time complainant moves for an injunction, and the appointment of a receiver. In my judgment the present status of the property in these cases should be maintained, either by enjoining the withdrawal

of oil, or by the appointment of a receiver, until the right of defendants to withdraw oil from the land is finally determined either by the Land Department or by the Court. It seems to me that the appointment of a receiver will work less hardship to defendants than the granting of an injunction. For this reason the application for the appointment of a receiver is granted. The motions to dismiss, to strike out, to make more certain and to transfer to the law side are denied.

M. T. DOOLING,
Judge.

February 1st, 1916. [49]

[Endorsed]: No. A–38—Equity. U. S. District Court, Southern District of California, Northern Division. The United States of America, Plaintiff, vs. Thirty-Two Oil Co. et al., Defendants. Opinion and order granting application for appointment of receiver, and denying motions to dismiss, to strike out, to make more certain and to transfer to law side. Filed Feb. 3, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [50]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. A–48.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFORNIA, PRODUCER'S TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,

Defendants.

Order Appointing Receiver.

This suit coming on to be heard on motion of the complainant for the appointment of a receiver and for an injunction, and having been heard on the 30th day of November, 1915.

IT IS NOW CONSIDERED, ORDERED AND ADJUDGED that HOWARD M. PAYNE, be, and he is hereby, appointed receiver of all the property described in the Bill of Complaint herein claimed by the defendants, to wit:

All of Section Two (2), Township Thirty-Two (32), South, Range Twenty-three (23) East, Mount Diablo Base and Meridian, and situated in Kern County, State of California.

and of the oil, gas and all other property of every kind [51] now situated on the said land, or already extracted therefrom, and still in the possession of defendants; and the defendants, and each of them, their agents, attorneys and employees, are enjoined from removing said oil, gas, or other property, or any part thereof, from said land, or in any manner interfering with the order of this Court, and are enjoined from further producing oil from said land, except by permission and under the direction of the said receiver.

Said receiver is directed to receive, and the said defendants are directed to surrender to said receiver all moneys in their hands or in the hands of any person or corporation for them, which are the proceeds of the sale of oil or gas produced from said lands hereinbefore described, and such persons holding such funds are directed to pay same to said receiver; and the said receiver is directed to collect any notes, accounts, or other evidence of debt due or payable on account of oil and gas produced from said land and sold by or for said defendants, or any of them.

The said receiver is given power and directed to operate any oil or gas well or wells on said property, or to permit them to be operated by the respective defendants now in possession of or operating same, or who have heretofore operated on said lands; or to close said wells, if he deems it necessary or advisable to do so in order to conserve the oil and gas in said lands and prevent said property from being damaged or the oil and gas from being wasted.

The said receiver is directed to ascertain the

quantity of oil and gas heretofore extracted by said respective defendants, and what disposition has been made thereof, and keep an account thereof, and to keep an accurate account of all oil and gas hereafter produced from [52] said lands, and to sell said oil and gas for the best price obtainable.

For the purpose of making an investigation and determining the condition of wells drilled on said lands, and particularly for the purpose of determining whether water is infiltrating the oil sands or reservoirs on said lands, and for the further purpose of ascertaining the amount of oil and gas heretofore produced, the price at which the same has been sold, and the value thereof, the receiver is directed and empowered to examine the logs of the wells and the books of account kept by the defendants or any of them in the development and operation of said lands.

For the purpose of preventing damage to said lands by the infiltration of water into the oil sands and otherwise, and for the purpose of protecting and operating the said property and carrying out the provisions of this order, the said receiver is authorized to employ such assistants and incur such expense, to be paid out of the moneys coming into his hands as receiver, as he shall deem necessary, subject to the approval of this Court.

A bond in the sum of Ten Thousand (10,000) Dollars, to be approved by this Court, shall be given by the receiver within fifteen days from the filing of this order; provided the solicitor for the complainant or for the defendants, or either of them, may at

any time upon one day's notice to counsel for the opposite parties, apply to the court for an increase in the amount of said bond.

The moneys coming into the hands of the said receiver shall, unless otherwise directed by the Court, be deposited in a bank or banks in special interest-bearing **[53]** accounts in the joint name of the receiver and the clerk of this court, and subject to the joint check and control of such persons, except so much of said funds as may be necessary to pay the monthly current expenses of the receiver in executing the orders of this court, and such sums as may be necessary for such purposes shall be deposited in a bank or banks to the credit of such receiver, as receiver for the respective defendants, and shall be subject to the receiver's check.

The amount of compensation to be paid to the receiver in this suit is to be determined hereafter.

This 2 day of February, 1916.

M. T. DOOLING,
United States District Judge.

[Endorsed]: No. A–48. In the District Court of the United States for the Southern District of California, Northern Div., Ninth Circuit. United States of America, Plaintiff, vs. North American Oil Consolidated, et al., Defendants. Order Appointing Receiver. Filed Feb. 3, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. **[54]**

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–48.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFORNIA, PRODUCER'S TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT, and WICKHAM HAVENS,

Defendants.

Notice of Lodgment of Statement of Evidence on Appeal.

To the United States of America, plaintiff above named, and to E. J. Justice, Esq., Albert Schoonover, Esq., A. E. Campbell, Esq., and Frank Hall, Solicitors for said Plaintiff.

PLEASE TAKE NOTICE that on the 15th day of March, 1916, defendants and appellants North American Oil Consolidated, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert, and Wickham Havens lodged with the clerk of the above-entitled court their Statement of Evidence to be included in Transcript on Appeal;

and that on the 25th day of March, 1916, said defendants and appellants will ask the Court or Judge to approve said Statement of Evidence.

Dated March 15th, 1916.

U. T. CLOTFELTER,
A. L. WEIL,
CHARLES S. WHEELER and
JOHN F. BOWIE,

Solicitors for said Defendants and Appellants.

[55]

Due service and receipt of a copy of the within Notice of Lodgment of Statement, also Statement of Evidence, this 15th day of March, 1916, is hereby admitted.

E. J. JUSTICE,
ALBERT SCHOONOVER,
A. E. CAMPBELL,
FRANK HALL,
Attorneys for Plaintiff.

[Endorsed]: No. A–48—Equity. In the United States District Court for the Southern District of California. United States of America, Plaintiff, vs. North American Oil Consolidated, et al., Defendants. Notice of Lodgment of Statement of Evidence to be Included in Transcript on Appeal. Filed Mar. 16, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Charles S. Wheeler, Attorney for Defendants North American Oil Cons. et al. Union Trust Building, San Francisco. [56]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–48.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFORNIA, PRODUCERS TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT, and WICKHAM HAVENS,

Defendants.

Statement of Evidence to be Included in Transcript on Appeal.

The motion for the appointment of a receiver was heard and determined upon the foregoing complaint and answers and upon the following affidavits:

1. AFFIDAVITS OFFERED BY PLAINTIFF: [57]

[Affidavit of Schuyler G. Tryon.]

State of California,
County of Kern,—ss.

Schuyler G. Tryon, being first duly sworn, deposes and says:

That he is a citizen of the United States and over

the age of 21 years, and that his postoffice address is Maricopa, California; that for more than ten years last past he has been actively engaged as superintendent of oil-drilling operations in said county of Kern, State of California;

That in the month of March, 1910, he was employed to take charge and superintend the active work of drilling oil wells on Section 2, Township 32 South, Range 23 East, M. D. M., and that on March 15, 1910, affiant went upon said Section 2 and made a personal examination of the entire section to determine the conditions thereon; that affiant at that time found on each quarter section of said Section 2, Township 32 South, Range 23 East, a complete Standard drilling rig, including derrick, engine-house and belt-house, being four complete standard drilling rigs in all; that there was also found on each quarter section of said Section 2, a cabin or bunk-house; that affiant also found upon the SE.¼ of said Section 2 at said time, namely, March 15, 1910, an old derrick, without boiler, engine or tools; that the appearance of said old derrick on said SE.¼ of said Section 2 was such as to indicate that the same had been standing upon the said SE.¼ for a considerable length of time, but that this affiant is unable to state when said old derrick was erected on said land; that at the location of this said old derrick on the said SE.¼ of said Section 2, a hole had been drilled, but that this affiant is unable to state how deep said hole was, nor can he [58] state at this time whether or not there was any casing in said old hole; that there were no indications at or around this old derrick on the said SE.¼ of said Sec-

tion 2, nor in and around the sump hole that had been used in connection with said old derrick, that any oil had been discovered in said old hole on the said SE.¼ of said Section 2; and that at the time this affiant examined said land, namely, on March 15, 1910, the belt-house in connection with this said old derrick on the said SE.¼ of said Section 2, had been blown down, and that the appearance of said old derrick, and the appearance of the ground around and adjacent to the same were such as to indicate to this affiant that no work had been performed at said old derrick for a considerable period of time prior to the date of his examination of the land, which, as heretofore stated, was about March 15, 1910.

That at the time this affiant made his examination of said Section 2, T. 32 S., R. 23 E., to wit, on or about March 15, 1910, he found that no drilling work of any kind or character had ever been done or performed upon either the NE.¼, NW.¼, or SW.¼ of said Section 2, T. 32 S., R. 23 E., and that there were not upon said quarter sections of land at said date any wells in which any discoveries of oil or gas had been made; and that in fact on March 15, 1910, when this affiant made a careful examination of the land in question, namely, the NE.¼, NW.¼, and SW.¼ of said Section 2, T. 32 S., R. 23 E., M. D. M., the said land was wholly undeveloped and in its native state, except for the standard drilling rigs and cabins that had been placed thereon, as aforesaid.

That affiant remained in active charge of development work on said Section 2, Township 32 South,

Range 23 E., M. D. M., from said 15th day of March, 1910, until the 1st day of March, 1911, [59] during which said period of time he visited the land in question, namely, Section 2, T. 32 S., R. 23 E., practically every day; and that during said period from March 15, 1910, to March 1, 1911, he kept an accurate record of the drilling work that was done and performed on the said section under the direction of this affiant, and that the following is a history of the drilling actually done upon the respective quarter sections of said Section 2 under the direction of affiant between March 15, 1910, and March 1, 1911, the facts as to the drilling on the respective quarter sections being given under separate headings, to wit:

Drilling Operations on SE.¼,
Sec. 2, T. 32 S., R. 23 E., M. D. M.

That shortly after affiant's arrival on said Section 2, on March 15, 1910, as aforesaid, boilers and an engine for the drilling rig on the SE.¼ of said Section 2 were ordered and purchased, and likewise drilling tools, cables, and casing were ordered and purchased for the drilling of a well at the location of said drilling rig on said SE.¼ of Section 2, which well was known as Well No. 1; that said supplies and materials so ordered and purchased, arrived from time to time, and, on April 15, 1910, affiant began the actual work of setting up a boiler and engine in connection with said drilling rig for drilling a well for discovery of oil on said SE.¼ of said Section 2; that the exact date when drilling operations actually began upon said quarter section cannot now be recalled by affiant, but affiant knows, or his

own knowledge, that actual drilling of the well at said location on the SE.¼ of said Section 2, began between the 15th day of April, 1910, and the 28th day of May, 1910, and that on [60] May 28, 1910, said well at said location on the SE.¼ of said Section 2, T. 32 S., R. 23 E. had been drilled to a depth of 460 feet.

Drilling Operations on SW.¼,
Sec. 2, T. 32 S., R. 23 E., M. D. M.

That shortly after affiant's arrival on said Section 2, on March 15, 1910, as aforesaid, boilers and an engine for the drilling rig on the SW.¼ of said Section 2, were ordered and purchased, and likewise drilling tools, cables and casing were ordered and purchased for the drilling of a well on said SW.¼, of said section 2; that said supplies and materials to be used in the drilling of a well on the said SW.¼ of said section 2, arrived from time to time, and in the latter part of April or the 1st of May in the year 1910, affiant began the actual work of setting up a boiler and engine in connection with said drilling rig on said SW.¼ of said Section 2, and rigging up said rig for drilling a well for the discovery of oil on said SW.¼ of said Section 2; that said boiler and engine were set up in connection with said drilling rig on the SW.¼ of said Section 2, and the well drilled at said location was known as Well No. 2; that the actual work of drilling said well began on the 20th day of June, 1910; that on July 17, 1910, said well at said location on the SW.¼ of said Section 2, was drilled to a depth of 665 feet; that nothing was done in or about the actual work

of drilling said well after July 17, 1910, until October 9, 1910, on which date the work of drilling said well was resumed, and was continued until October 12, 1910; that no work in connection with the actual drilling of said well was done after October 12, 1910, and prior to March 1, 1911, at which date this affiant ceased to have charge of the work on said Section. [61]

Drilling Operations on the NW.¼.
Sec. 2, T. 32 S., R. 23 E., M. D. M.

That shortly after affiant's arrival on said Section 2, on March 15, 1910, as aforesaid, boilers and an engine were ordered and purchased, and there were also ordered and purchased drilling tools, cables and casing for the equipment of said drilling rig on said NW.¼ of said Section 2; that said supplies and materials arrived from time to time, and in the month of June, 1910, affiant began the actual work of setting up a boiler and engine in connection with said drilling rig located on the said NW.¼ of said Section 2; that actual drilling operations began upon said quarter section at said location on the 25th day of July, 1910; that on August 22, 1910, said well, which was known as well No. 3, had been drilled to a depth of 620 feet; that nothing was done in or about the actual work of drilling said well on the said NW.¼ of said Section 2, after August 22, 1910, and prior to March 1, 1911, at which date this affiant ceased to have charge of the work on said Section.

Drilling Operations on the NE.¼,
Sec. 2, T. 32 S., R. 23 E., M. D. M.

That shortly after affiant's arrival on said Section 2, on March 15, 1910, as aforesaid, boilers and an engine were ordered and purchased, and there were also ordered and purchased drilling tools, cables and casing for the equipment of said drilling rig on said NE.¼ of said Section 2; that said supplies and materials arrived from time to time, and during the last of June or first part of July, 1910, affiant began the actual work of getting up a boiler and engine in connection with said drilling rig located on said NE.¼ of said Section 2; that actual drilling [62] operations began upon said quarter section at said location on the 5th day of September, 1910; that on September 22, 1910, said well on said NE.¼ of said Section 2 had been drilled to a depth of 586 feet; that nothing was done in or about the actual work of drilling said well after September 22, 1910, and prior to March 1, 1911, on which last named date this affiant ceased to have charge of the work on said section.

That the wells drilled on the four quarter sections of Section 2, T. 32 S., R. 23 E., as hereinbefore set out and described, were all drilled under the supervision of this affiant, and that he kept an accurate record of the work that was performed on each well, and that he knows of his own knowledge, and from an examination of the records kept by him at the time said work was being performed, that no discovery of oil or gas was made in any of the holes that were drilled on said Section 2, Township 32 South, Range 23 East, while he was in charge of

the work on said Section, which was from March 15, 1910, to March 1, 1911.

That during the entire time affiant was in charge of drilling operations on said Section 2, the said drilling operations proceeded with all possible diligence and all said wells aforesaid were drilled as expeditiously as possible under existing conditions as to water and delivery of freight.

That during the past ten years affiant has been working in and around the oil fields of Kern County, California, and has had charge of the construction of numerous derricks such as he found standing upon each quarter section of said Section 2, T. 32 S., R. 23 E. at the time he made an examination of this land on March 15, 1910; that it has been his experience that a derrick such as he found standing upon each quarter section of Sec. 2, T. 32 S., R. 23 E., on March 15, 1910, can, under ordinary [63] circumstances, be erected in about ten days' time.

SCHUYLER G. TRYON.

Subscribed and sworn to before me, at Maricopa, Calif., this 7th day of December, 1915.

E. E. BALLAGH,

Notary Public in and for the County of Kern, State of California. [64]

[Affidavit of Silas L. Gillan.]

United States of America,
Northern District of California,
State of California,—ss.

Silas L. Gillan, being duly sworn, on oath deposes and says:

I am a citizen of the United States over the age of 21 years. I am a graduate mining engineer and during most of the period of the last five years I have been engaged in the California oil fields as mineral inspector of the General Land Office of the United States, and as such have examined and reported to said General Land Office as to the conditions of, and development work being carried on in, said oil fields.

I visited Section 2, Township 32 South, Range 23 East, M. D. M., on the 7th day of December, 1915. At said time I found on said Section, ten wells producing oil. From six of said wells oil was being pumped and from four of said wells oil was flowing without being pumped.

SILAS L. GILLAN.

Subscribed and sworn to before me this 9th day of December, 1915.

[Seal] C. W. CALBREATH,

Deputy Clerk U. S. District Court, Northern District of California. [65]

2. AFFIDAVITS OFFERED BY DEFENDANTS, NORTH AMERICAN OIL CONSOLIDATED, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT AND WICKHAM HAVENS: [66]

[Affidavit of I. Strassburger.]

State of California,

City and County of San Francisco,—ss.

I. Strassburger, being first duly sworn, deposes and says:

That during the years 1908, 1909, and 1910, he was manager of the Pioneer Midway Oil Company of California, a Corporation; that up to the month of March, 1910, the Pioneer Midway Oil Company was the owner of the following oil placer mining claims, to wit:

Banter No. 1, being the Northwest Quarter of Section 2, Township 32 South, Range 23 East, M. D. B. & M.

Banter No. 2, being the Northeast Quarter of said Section 2;

Banter No. 3, being the Southeast Quarter of said Section 2;

Banter No. 4, being the Southwest Quarter of said Section 2;

That said placer mining locations were located under the placer mining laws of the United States prior to the 27th day of September, 1909, and that prior to said date said Pioneer Midway Oil Company had caused to be erected on each of said quarter sections of land dwelling-house for its men, and had caused to be erected on each of said quarter sections a complete standard drilling rig, including derrick, engine house, belt-house, and rig irons.

That said work was done at a total expense of Two Thousand Nine Hundred Dollars, ($2,900.00); that after the completion of said rigs and equipment on said lands, it was the intention of [67] the Pioneer Midway Oil Company to immediately proceed with the work of development thereon, and to start the drilling of wells on said four quarter sections, but that it was impossible to obtain any

water for the purpose of drilling said wells; that it is necessary in the drilling of an oil well that there be a constant supply of water on hand, and that the failure of water or the failure of an adequate supply of water at all stages of the drilling operations will inevitably result in large and serious loss to the drilling company by reason of the sticking of the casing, and in many instances the failure of sufficient water for drilling requires the abandonment of the well.

That during the period of time from the completion of said derricks up to and including the month of March, affiant made constant and diligent efforts to secure an adequate supply of drilling water.

That affiant was interested in the drilling of an oil well on Section five in the same township and range, two miles to the West of the land involved in the above-entitled action, and on said land was securing water from the Stratton Water Company; that the supply furnished by the Stratton Water Company was totally inadequate and very seriously handicapped the operation on said Section 5; that there never was at any time sufficient water on said Section 5 to drill more than one well, and this well was often shut down by reason of the failure of water.

That said Section 5 is within a mile of said Stratton Water Company, and it being impossible to obtain an adequate supply of water at this point, there was no water to be carried for the additional distance over to Section 2. [68]

That up to the time of the sale of said property by the Pioneer Midway Oil Company about the mid-

dle of March, 1910, there had been expended on each quarter section approximately Two Thousand Dollars, ($2,000.00).

That during the whole of said period of time, the Pioneer Midway Oil Company was ready and willing and had the necessary funds for drilling a well on each one of said quarter sections, and diligently and continuously endeavored to secure the necessary water so to do, and it was owing to the utter impossibility of getting sufficient water that the actual work of drilling was not started.

That affiant was in and about each one of said four quarter sections on several different occasions during the year 1910, and prior to September 27, 1909, and on said occasions and on each of said quarter sections affiant saw and found deposits of gypsum in large and extensive quantities on different parts of each of said quarter section.

I. STRASSBURGER.

Subscribed and sworn to before me this 18th day of December, 1915.

[Seal] FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California. [69]

AFFIDAVIT.

State of California,

City and County of San Francisco,—ss.

I. Strassburger, being duly sworn, deposes and says:

That all during the year 1909, he was the Manager of the Pioneer Midway Oil Company; that dur-

ing all of said year the said company was the owner and in possession of all of Section 2, Township 32 South, Range 23 East, M. D. B. and M., in Kern County, California.

That between the 21st day of June, 1909, and the 27th day of September, 1909, work leading to a discovery of oil upon each of the quarters of said section was diligently prosecuted. In that behalf this deponent avers:

That prior to the 21st day of June, 1909, the said corporation had determined to proceed with drilling upon the said section at the earliest possible moment and to that end had determined to put in the necessary machinery and establish a camp, and employed the necessary men for the purpose of proceeding with the said drilling; that it was the intention of said corporation to drill at least one well upon each of the four quarters of the said section.

That on said 21st day of June, 1909, two boilers for use in drilling wells on said section were purchased; that sometime between said 21st day of June, 1909, and said 27th day of September, 1909, the said boilers were taken to the said Section 2 and were deposited at a point near the center of the said section and were placed upon the ground in such a position that the same could be used for drilling wells upon all of the four quarters of said section. [70]

That deponent does not know the exact date on which the said boilers were taken to the said ground but he believes it to have been shortly before the said 27th day of September, 1909.

That deponent acting for said Company directed

that a camp be established upon the said Section for the purpose of drilling wells upon each of the quarter sections thereof, shortly prior to the 21st day of June, 1909, and on said 21st day of June, 1909, received a report from the superintendent of said property wherein the said superintendent stated: "I will establish a camp down on Section 2 as soon as possible and will commence the erection of those boilers."

That it was intended that the establishment of the said camp referred to in the report of the said superintendent should be coincident with the beginning of drilling upon the said property; but that the same was not established for the sole reason that it was not possible to get water upon the said Section at the said time and that said condition of affairs existed so that it was impossible to get water on the said Section in sufficient quantity for drilling at any time prior to the 27th day of September, 1909, and for several months thereafter.

That this deponent being desirous of procuring water on the said section arranged to have a well sunk for the purpose of finding water and to that end a derrick was set up on the said section some time during the said year and prior to the 27th day of September, 1909, but at what precise date deponent does not now recall and a hole was sunk to a considerable depth, but water was not discovered therein and the said work was subsequently given up and abandoned and the method of obtaining water by drilling upon said land was thenceforth believed by this deponent to be hopeless. [71]

That the said corporation was ready, able, anxious and willing to proceed with drilling wells upon each of the four quarters of the said section and would have begun the drilling thereon immediately after the said 21st day of June, 1909, but for the said difficulty with water.

That employees of the said corporation were in actual physical possession of each of the four quarters of the said Section 2 and were actually living and laboring thereon on said 27th day of September, 1909; that on or about the said 27th day of September, 1909, the said employees were performing labor in clearing brush and leveling ground for the construction of the proposed drilling plants of the said corporation and that the said work of brushing out was done upon each of the said four quarters of said section respectively.

I. STRASSBURGER.

Subscribed and sworn to before me this 27th day of December, 1915.

ALICE SPENCER,
Notary Public in and for the City and County of San Francisco. [72]

[Affidavit of M. J. Laymance.]

State of California,
County of Alameda,—ss.

M. J. Laymance, being first duly sworn, deposes:

That he is a member of a syndicate which purchased Section 2, Township 32 South, Range 23 East, M. D. B. & M., from the Pioneer Midway Oil Company.

That at the time of the purchase of said land there was a complete drilling rig and bunk-house on each of the quarter sections of said Section.

That upon the acquisition of said land, on or about the 1st of March, 1910, immediate steps were taken to commence drilling on all four quarters of said Section in the way of getting tools, machinery and arranging for water; that the first work done was in the way of laying a water line; a two-inch water line to all derricks and buildings was laid; that the first arrangement for water was through the permission of the Union Oil Company to make a connection with their water line through which they were getting water from the Stratton Water Company, a delay of three weeks ensued in getting water through the line after the line was laid, and actual drilling commenced on April 28, 1910;

Sufficient water could not be obtained to run more than one string of tools;

That during all periods the railroads failed, despite the efforts of shippers, to deliver freight promptly anywhere in the Midway District, and particularly at Taft, which was the freight station in Section 2 in said Midway Field; that the failure of the railroads to give prompt or adequate service was general in said Midway District; that during said period there was an exceptionally large demand for casing for wells **[73]** and the manufacturers of casing, because of the unusual demand, were unable to supply demands promptly, or fill orders with any degree of certainty or promptness; that there were often delays in shipment after orders for casing

were given and delays in delivery by the carrier after shipment was made.

That all materials and supplies were hauled by railroad to Taft and thence by wagon to Section 2; that there were particularly delays in securing delivery of casing.

That during all periods there was an insufficient supply of water; that this condition was due to the fact that said Section 2 is located in arid country; and that the demand for water greatly exceeded the available supply; that at no time was there sufficient water to drill more than one well until October, 1910, when affiant succeeded in getting water from a new well on said Section 2; that said well proved insufficient and shortly after beginning to use water from said well, affiant laid a two-inch pipe-line from the center of Section 2 to Section 34; that said pipe-line was laid and connected with a line supplying water from Buena Vista Lake; that the owners of said source of supply would not allow a larger connection than a two-inch pipe to be made with their water line, and limited the supply of water to Section 2 to an amount adequate to drill but one well at a time;

That as a result of the conditions it was impossible to drill wells on each quarter section simultaneously.

That affiant made every effort to get water in additional quantities, but was unable to do so; that as a result of the water situation, and the limited supply available, affiant was **[74]** compelled to rotate the work of drilling on said quarter sections,

drilling only one well at a time; that during the entire time that affiant was interested in said property, drilling operations were continued with all possible diligence, and all said wells were drilled as expeditiously as possible under existing conditions as to water and delivery of freight.

That the Northeast, Northwest, Southeast and Southwest quarters of said Section 2 were all located as placer mining claims, and constituted a group of claims lying contiguous and owned by the same persons, and that all labor done on one of said claims for the discovery of oil tended to the development to determine the oil-bearing character of the contiguous claims.

M. J. LAYMANCE.

Subscribed and sworn to before me this 18th day of December, 1915.

C. H. ELIASSEN,

Notary Public in and for the County of Alameda, State of California. **[75]**

[Affidavit of E. W. Kay.]

State of California,
City and County of San Francisco,—ss.

E. W. Kay, being first duly sworn, deposes:

That he was during all of the time hereinafter mentioned Manager of the Stratton Water Company; that he is not a party to nor in anywise interested in the above-entitled action.

That from August, 1909, to July, 1910, the Stratton Water Company was engaged in the business of producing and selling water in the North Midway

Field; that during said time, it had three producing wells; that two of said wells were of little value, and all the water they could produce in 24 hours could be pumped out in an hour and a half; that during said period of time, Stratton Water Company at no time, operating its wells for full capacity during twenty-four hours, could produce in excess of 3,300 barrels of water.

That during said period of time the Stratton Water Company had applications from Oil Companies desiring water for 16,000 to 20,000 barrels a day; that Stratton Water Company actually entered into arrangements to supply from sixteen to twenty oil companies with water at from seven to nine cents a barrel; that the requirements of these companies were for not less than 7,500 barrels a day for current use, and it was necessary in the interests of due caution that each company should have from 700 to 1,000 barrels of water on hand to hold down heaving sands which would destroy the well; that in the endeavor to supply the requirements of its companies with which it had contracts, and which companies needed 7,500 barrels a day with the 3,300 barrels total output of the Stratton Water Company, it was the policy of the company to divide this water up as equally and equitably as possible. **[76]**

That in pursuance of this policy, whenever one well got into serious trouble and was in urgent need of a large amount of water, it was customary to shut off the water supply of the other companies and supply the necessities of the company that was in trouble.

That during said period of time, one of the companies which it supplied with water was the Mays Oil Company; that this company was supplied through a two-inch pipe-line which was built by the Mays Oil Company, and ran for a distance of about three and a half miles; that at no time could the Stratton Water Company, in view of its contracts, have furnished the Mays Oil Company with enough water to run more than one well; that it was the policy of the Stratton Water Company never to supply its customers with more than enough water to run one well; that the well of the Mays Oil Company was often shut down on account of lack of water, and that said company lost a string of casing and finally lost the well, and had to start a new one by reason of failure of water supply.

That during this period of time, there was no other water supply in the Midway Field, except the water that was brought in by the Chanslor-Canfield-Midway Oil Company; that the Chan*selor*-Canfield-Midway Oil Company had only enough water for its own use and a few immediate favored neighbors;

That the Stratton Water Company, during this period of time, attempted to increase their supply of water without any material result;

That representatives of the Mays Oil Company, during this period, visited affiant from two to eight times a day, urging affiant to maintain a steady supply of water at the drilling well, and to give them water for the other wells; that from the location of the Water Company's property, it was possible for [77] affiant to see the other wells, and that on

many occasions when water was shut off from the well for the purpose of aiding some other property that was in difficulties, affiant could see the superintendent of the shut-down property getting into his conveyance to visit affiant and that thereupon affiant would turn the water into the line of that property, and thus satisfy the superintendent when he arrived, and as soon as the superintendent left, he would shut off the water again, so that by the time the superintendent returned to his property they would be without water.

That affiant does not now recall whether the operators of Section 2, Township 32 South, Range 23 East, M. D. *M.* & M. applied to the Stratton Water Company for water, but had they applied, it would not have been provided, as there was not sufficient water to fill their engagements that had already been made; that it was practically impossible to haul water in wagons to the Mays Oil Company on account of the bad grade which would have tilted the water out of the wagons.

Affiant further states that when he first started operations in the Midway Field, it took three and a half days to make twelve and a half miles with teams loaded with lumber; that in hauling water, it cost fifty-five cents a barrel to haul the water, and the mules would drink half the water that was being hauled while they were getting it there.

E. W. KAY.

Subscribed and sworn to before me this 17th day of December, 1915.

FLORA HILL,
Notary Public in and for the City and County of San Francisco, State of California. [78]

[Affidavit of Louis Titus.]

State of California,
City and County of San Francisco,—ss.

Louis Titus, being first duly sworn, deposes and says:

That he is the President of North American Oil Consolidated, a corporation, and has been the President of said corporation from the time it was organized in December, 1909, down to the present time.

That North American Oil Consolidated succeeded to the property and interests of a corporation known as the "Hartford Oil Company," and that this affiant was the President of said Hartford Oil Company from the time of its incorporation in May, 1909, down to the date of the dissolution of said corporation sometime in 1910. That said Hartford Oil Company was operating upon Section 16, Township 32 South, Range 23 East, M. D. B. & M., Kern County, California, during the year, 1909, and drilling wells thereon; and also on Section 22, same township and range, during the same period of time. That in January, 1910, said operations were taken over by said North American Oil Consolidated and have been conducted thereon ever since, down to the present time. That in February, 1910, said North

American Oil Consolidated began operations on Section 26, same township and range; and also upon Section 15, same township and range. That the operations on all the foregoing property included the drilling of a considerable number of wells. That the above sections of land, with the exception of Section 15, were patented sections, the land in Section 22 and Section 26 having been patented by the United States Government to the predecessors in interest of the corporation above mentioned, under placer mining locations.

That beginning in January, 1910, and continuing throughout the year 1910 and a part of 1911, said corporation was operating on Sections 27 and 28, same township and range. Said sections **[79]** 27 and 28 were not patented claims but were held under placer mining locations.

That from the beginning of the operations of said Hartford Oil Company the greatest difficulty was experienced by said Company in procuring sufficient water with which to drill its wells. The only sources of water supply available in that portion of the field at that time was one water system owned by H. C. Stratton, (which was afterwards turned over to the Stratton Water Company, a corporation); and a second water system belonging to a corporation called the "Chanslor-Canfield Midway Oil Company," which was in fact, owned and operated by the Santa Fe Railroad Company. That this affiant personally made efforts in the beginning to secure water from said Chanslor-Canfield Midway Oil Company but was positively refused, the officers of

said Company claiming that they had no water to sell, all the water they had being required for their own purposes. That he did succeed in buying water from H. C. Stratton, and the first water was delivered to Hartford Oil Company by said Stratton in May, 1909, and thereafter more or less water was delivered by said Stratton Water Company to the corporation above mentioned for a period of several years. That said source of water supply was very inadequate and inefficient; that there was never more than sufficient water to drill one well at any one time, whereas said corporation very much desired to drill several wells at the same time. That many times operations had to be shut down because there was no water to operate even one string of tools. That these delays were expensive and costly because of the danger of losing the casing in the hole and because the labor had to be paid for whether the tools were being operated or not. **[80]**

That this affiant expostulated with said Stratton and other managers of the said water company, many times over the inadequacy and inefficiency of the service, but said company was totally unable to supply any greater amount of water because their system was insufficient and had no greater capacity.

That thereupon, toward the end of 1909, this affiant despaired of getting water in sufficient quantities from the said Stratton Water Company and began negotiations again with the Chanslor-Canfield Midway Oil Company; and that he finally succeeded in purchasing some water from the said Chanslor-Canfield Midway Oil Company. That said com-

pany would make no promise that it would furnish any particular amount of water, but that it would allow us to turn the water on when there was water in the pipes to be had. That this source of supply was also very inefficient and totally inadequate to meet the wants of said corporation, North American Oil Consolidated. Nevertheless, said corporation continued to buy water from both of said water companies during the early part of 1910. That early in 1910, despairing of getting sufficient water from these two water companies, or from any other source that was apparently available, this affiant caused to be constructed a side track along the railroad, running across a portion of the property of the North American Oil Consolidated on Section 15; and thereupon for a period of several months, beginning with September, 1910, water was shipped by trainload to said North American Oil Consolidated, from Bakersfield to said side track on Section 15, and from there was pumped to Section 22, Section 16 and Section 26. That said operation required the laying of long strings of pipe and the installing of expensive pumping machinery. That this method of procuring water proved to be so expensive that it was not practicable and was finally abandoned in April, 1911. [81]

That Section 2 is in the same general locality as the sections heretofore mentioned as being operated by North American Oil Consolidated; that the said general conditions as to water existed on Section 2 as existed on the sections hereinbefore mentioned, excepting for the fact that neither the Stratton

Water Company nor the Chanslor-Canfield Midway Oil Company had any water line within several miles of Section 2; and had either of said companies had a water line reaching to Section 2 they could not have supplied said Section 2 with water for the reason that they could not supply their own demands and the customers they already had, as heretofore related. That there was no other water company anywhere at all in the vicinity of Section 2, and there was no water available for the development of Section 2 down to sometime in 1910, when the predecessors in interest of the North American Oil Consolidated on Section 2 made an arrangement whereby a very small amount of water was procured. This supply was very inadequate and was never sufficient to drill more than one well at any one time, and there was no other possible source of supply for water during the year 1909 and down to the latter part of 1910.

It is, of course, true that water could have been hauled in wagons for many miles and across a country having no roads. It would have been a physical possibility to have drilled wells in this manner, but as a practical commercial proposition it was absolutely prohibitive and the cost would have been so colossal that no well could have been drilled with any profit no matter how great the returns from such a well. The whole country in which Section 2 is located is an arid country, almost desert in character, with practically no vegetation; and no surface **[82]** water and no well water could be had except at extraordinarily great depth. During 1909, and

until the latter part of 1910, it was not known nor even supposed that any water could be procured from wells at any depth whatever. All of the surrounding drilling at that time had tended to prove that no water in any quantities could be obtained from such wells, and it was only after 1910 it was found that, by drilling very deep wells and installing expensive pumping machinery, water in commercial quantities could be lifted from some wells in that vicinity; all water from such wells being salty and totally unfit for domestic purposes, but could be used for the purpose of drilling wells.

That in drilling an oil well large quantities of water must be constantly used, and any stoppage in the water supply while a well is being drilled is almost sure to be disastrous, frequently resulting in freezing of the casing, thus making an additional expense of several thousand dollars; and, moreover, such lack of water very frequently results in absolutely ruining the well, necessitating an abandonment of that particular well and beginning all over on a new well.

That during the early part of 1910, this affiant, seeing that there would be great difficulty in procuring any adequate water supply for drilling in said locality, together with certain of his associates, employed engineers and began plans for bringing in a source of water supply that would be adequate to meet the requirements (at least in some small degree) of said locality. That in pursuance of this employment, said engineers caused certain surveys to be made from Pine Cañon in the Santa Barbara range of

mountains for a distance of over forty miles to said Midway field; and complete plans and specifications were made for the laying of a pipe-line for said distance. Bids were actually procured for the building of said pipe-line upon **[83]** said specifications, whereupon it was found that the cost of building said pipe-line would be prohibitive and would be much greater than any possible return from the same would warrant.

That this affiant and his associates spent altogether approximately Ten Thousand Dollars ($10,000.00) in making said surveys and in endeavoring to find an adequate source of water supply. That this expense was incurred beginning in the very early part of 1910, down to the beginning of 1911. That at all the times mentioned in this affidavit this affiant was acquainted with the owners of Section 2 involved in this action. That he knew of the difficulties the owners of Section 28 were having in procuring water at all times beginning with the middle of 1909, down to the end of 1910. That as a practical commercial proposition it was impossible to have procured water for Section 2 for purposes of drilling at any earlier time that the same was actually procured. That he was thoroughly familiar with all possible sources of water supply during 1909 and 1910 for said locality; and that this affiant does not believe that by any degree of diligence, or any expenditure within the bounds of reason, any supply of water sufficient for drilling purposes would have been procured in an manner for Section 2 at any

earlier period of time than the same was actually procured. [84]

That early in 1910 this affiant consulted the owners of Section 2 for the purpose of determining whether said owners would purchase water for drilling from this affiant and his associates if they succeeded in bringing an adequate supply to said locality. That this affiant was assured at that time by the owners of Section 2 that they would be only too glad to purchase water from this affiant or from anyone else who could furnish it to them.

That said North American Oil Consolidated, together with its predecessors in interest, has been in the actual and notorious possession of said Section 2, and working the same to the knowledge of this affiant, for more than six years, prior to the commencement of this action.

That the said North American Oil Consolidated acquired, and entered into possession of, said properties in the month of July, 1913, and from that time forward this deponent has been the president of said corporation and has had the active management of its affairs.

That at the time that the North American Oil Consolidated took possession of said Section 2 as aforesaid there were situate on the said section three completed wells in which oil had been discovered in paying quantities and there was one well upon which drilling had been started, and which had been partially drilled.

That since the said North American Oil Consolidated acquired the said properties it has erected

upon the said properties elaborate improvements and drilled seven new wells and has also proceeded with the drilling work that was in progress at the time that the said properties were acquired.

That the said North American Oil Consolidated has during the said period laid out and expended in improvements upon [85] said property and in drilling wells and in exploration and development work a sum in excess of $350,000, and that the improvements now upon the said property are of a value in excess of $350,000.00.

That the occupation of the said Section 2 by the said North American Oil Consolidated and its predecessors in interest were and have been at all times open, notorious and were at all times actually known to the Land Department of the United States Government and that whatever activities in the way of development and improvement of the said property have taken place were with the full knowledge of the officers and agents of the Land Department of the United States. That during all of the said period of time the said North American Oil Consolidated has given to the agents of the Land Department free access to its books and records of all kinds and the said United States Government has at all times during the said period had actual reports and knowledge of the improvements that the said corporation was making upon said property, and has had access to the books and papers of said corporation showing the amount of oil that it had extracted and was extracting, and showing the contractual obligations which said corporation was under in the matter of

its equipment and the disposition of its oil supply.

That during all of the said time the plaintiff through the officers and agents of its Land Department has had actual knowledge that the defendant, North American Oil Consolidated, was in possession of the said property under a claim of right, and it has during all of said period of time and until the filing of this suit stood by and knowingly permitted the said defendant corporation, without objection, to make the aforesaid **[86]** expenditures of money and to extract oils from said properties and to incur obligations in and about the development of said property, and to develop the said property to its present condition and to extract therefrom the very oil the value of which it is here seeking to recover.

That deponent is informed and believes and on such information and belief avers that similarly with full knowledge of the facts concerning the location and possession and the work that had been done upon the said Section 2 on and prior to the 27th day of September, 1909, plaintiff stood by and knowingly permitted the predecessors in interest of the said North American Oil Consolidated to remain in undisputed possession of the said premises and to expend, in work and labor tending to the development of oil on said property, upwards of $200,000.00. That the money so expended had been expended in large part in developing the identical wells upon the said property which were producing oil at the time that the said North American Oil Consolidated purchased the said property, and that the purchase of the said property by the said North American Oil

Consolidated was largely induced by the said developments. That because of the said development the said North American Oil Consolidated has paid to its predecessors in interest more than $500,000.00 and expects to pay to said predecessors in interest the additional sum of upwards of $700,000.00 for said property.

That deponent as president of said North American Oil Consolidated has made a rigid and careful study of the most economical methods of handling the business conducted by the said corporation.

That the said business is one which deals with large quantities of oil and with a very great number of items of expense, and that the difference of a very few mills or cents upon [87] each item involved results in great aggregate loss or gain to the said corcorporation; that the business is one requiring for its successful conduct careful training and years of experience and calls for all of the energy and painstaking perseverance of self-interest in order that such business shall be economically and advantageously administered; and in order that its wells may continue to produce. That without such an administration of said corportion's business great and irreparable loss will result to the said business and to the said corporation and its stockholders.

That men trained in the said business and who have the time at their command and are in a situation to devote the necessary energy to conduct such a business would be very difficult to find; that deponent in his own experience has found it impossible to himself select or procure thoroughly satisfactory

assistants in such work, regardless of the amount that he has been prepared to pay therefor. Deponent verily believes that it is most improbable that this court could find a person to act as Receiver of said business who would administer the said business without serious and irreparable loss and detriment to the said corporation and its stockholders.

That in the judgment of this deponent a Receiver cannot be appointed to take charge of and operate the said properties without irreparable loss and injury to the said corporation.

That the said corporation is fully able to respond in damages for any detriment the plaintiff may suffer pending this litigation.

LOUIS TITUS.

Subscribed and sworn to before me this 27th day of December, 1915.

C. B. SESSIONS,

Notary Public in and for the City and County of San Francisco, State of California. [88]

[Affidavit of Colin C. Rae.]

State of California,
County of Los Angeles,—ss.

Colin C. Rae, being first duly sworn, deposes and says:

That he is now, and at all times herein mentioned was a citizen of the United States, over the age of twenty-one years; that his postoffice address is 1003 Higgins Building, in the city of Los Angeles, county and state aforesaid.

That he has investigated the conditions existing

in the Midway Oil Fields, so called, in Kern County, from September 1, 1909, to and including July 2d, 1910, with reference to facilities for the drilling of oil wells, and affiant states that from his examination of the conditions existing at said time development was retarded and rendered costly and uncertain by lack of a proper water supply.

That on September 27th, 1909, the only companies selling water in the Midway Oil Fields were the Chanslor-Canfield Midway Oil Company and the Stratton Water Company.

That in 1905 the Chanslor-Canfield Midway Oil Company installed a 3-inch water line from some water wells on Section 23–30–21, which is in the Santa Maria Valley, about 3 miles west of McKittrick, and ran the line along the foothills to Section 17–31–22, and then to what is known as the 25 Hill District in the Midway field. The wells were shallow, being only 70 or 80 feet deep and were dug in the earth.

That the Chanslor-Canfield Midway Oil Company, in addition to supplying water for its own development, sold water to various consumers whose land was contiguous to said water pipe-line.

That the quantity of water called for was greater than the supply, and therefore, in the latter part of 1908 the Chanslor-Canfield **[89]** Company commenced the installation of a 6-inch pipe-line to take the place of the old 3-inch line. This line was finished in 1909, and was about 25 miles in length. When the line was completed it was found that the water wells would not produce sufficient water to

supply the demand, and consequently the wells were deepened but with no better results.

That in April, 1909, the drilling of new wells was commenced and work continuously carried on until October, 1909, during which time 8 wells were completed, and with more or less success as to production of water.

That when said wells were completed it was found that the pump used to force the water through the 6-inch water line was inadequate and a Snow pump was ordered in the East. This pump was put in operation in the latter part of August, 1909, but proved to be too small, and another *until* was ordered, but was not put in operation until about October, 1910, and until the new unit was installed the capacity of the line was not materially greater than the old 3-inch line which had been in use prior to building the new 6-inch line.

That in addition to the new water wells, pumps and lines, it was necessary to install several 2,000-barrel tanks, which was done at various points in the field, as well as 3 100-h. p. boilers and several Luitweiler pumps, and that the cost of said water system was in the neighborhood of $200,000.00.

That the number of consumers served by said Chanslor-Canfield Midway Oil Company was at no time in excess of 30, and during the period from September, 1909, to July 2d, 1910, there was constant trouble, and at many times an insufficient quantity of water for development purposes. **[90]**

That by reason of the insufficiency and uncer-

tainty of the water supply, the development of oil wells was retarded.

That the Chanslor-Canfield Midway Oil Company distinctly stipulated with its consumers as to said uncertainty and assumed no liability in any way.

That at all times during said period there was a far greater demand for water than the Chanslor-Canfield Midway Oil Company could supply, and that said company actually had, at all times herein mentioned, a waiting list of individuals and companies who desired water for development purposes.

That the Stratton Water Company secured water from a well originally sunk for oil, in the northeast corner of Section 7, Township 32 South, Range 27 East.

That a 3-inch pipe-line, five miles in length from said well was run in a general southeasterly direction along the foot-hills to what is known as the 25 Hill District, in the Midway Field.

That the water sold by this company was not, as a matter of fact, fit for use in boilers.

That said company could not supply the demand made upon it for water.

That the supply was uncertain and that development was actually stopped on several sections or portions thereof because of failure of water supply.

That by reason of the inability to obtain water in the Midway Field some of the larger companies put in private water systems at a large expenditure of money.

That in 1908 the Standard Oil Company investigated the various sources of water supply in the

Midway Field, but could not obtain water for the operation of its pump station for development purposes. **[91]**

That said Standard Oil Company in 1908 entered into a contract for the sinking of a water well on Section 1, Township 32 South, Range 23 East, M. D. B. & M.

That a well was sunk, but said company was not successful in developing a water supply from said well.

That said company being unable to secure water for the operation of its oil pipe-line and for the development of its properties, developed a water supply at Rio Bravo, a distance of 23 miles from Taft, Kern County, California, and brought water into the Midway Field through the said oil pipe-line.

That oil was pumped a few days to Rio Bravo, the line cleared and water pumped back from Rio Bravo to tanks in the Midway Field.

That this water was the only water used by Standard Oil Company for development work in Midway Fields; that this mode of supplying water was used by said company until 1910, when a separate water pipe-line was constructed from Rio Bravo to the Midway Field.

That said company did not supply water to any other person or company, and based its refusal so to do on the ground that it did not have water enough for its own development and use.

That in order to carry on development work in the early part of 1909 the Honolulu Oil Company by reason of said universal scarcity of water, investigated

possible sources of supply, and drilled a well for the purpose of securing a water supply near Buena Vista Lake.

That said company was not successful in securing suitable water for its said needs, and entered into negotiations with the Buena Vista Reservoir Association, and through a private arrangement secured water from said Buena Vista Lake, which was conveyed by means of a water pipe-line to the properties of the said Honolulu Oil Company in the Midway Field. **[92]**

That said water pipe-line system was constructed at a cost of many thousands of dollars, and the Honolulu Oil Company did not furnish any person or company with water, giving as a reason the fact that the said water pipe-line would not supply any more than enough water for the use of said company.

That by reason of the inability of operators to secure water for development purposes and their great need therefor, a co-operative organization, known as the Kern Midway Water Company, was organized, and brought water in to said Midway Field in tank cars.

That at no time was the amount of water secured in this manner sufficient for the needs of the said organization.

That cars for said purpose were secured with great difficulty and that said supply was unreliable.

COLIN C. RAE.

Subscribed and sworn to before me this 16th day of December, 1915.

BERTHA L. MARTIN,
Notary Public in and for the County of Los Angeles, State of California. **[93]**

The foregoing Statement of Evidence on Appeal is found to be full, true and correct, and the same is hereby approved.

Dated March 29, 1916.

M. T. DOOLING,
Judge.

[Endorsed]: No. A–48—Equity. In the United States District Court for the Southern District of California. United States of America, Plaintiff, vs. Consolidated Mutual Oil Company et al., Defendants. Statement of Evidence to be Included in Transcript on Appeal. Lodged Mar. 16, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. U. T. Clotfelter, A. L. Weil, Charles S. Wheeler and John F. Bowie, Attorneys for Defendant, North Am. Oil Con., Union Trust Building, San Francisco. Filed Apr. 1, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. **[94]**

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–48.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED et al.,

Defendants.

Stipulation on Severance.

WHEREAS, a judgment or order has been made and entered appointing a Receiver in the above-entitled action; and,

WHEREAS, the defendants North American Oil Consolidated, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter Leimert and Wickham Havens, desire and intend to appeal therefrom; and,

WHEREAS, the defendant Pioneer Midway Oil Company, Union Oil Company of California, Producers Transportation Company, do not desire or intend to appeal from such order; and

WHEREAS, under such circumstances it is proper that an order of severance be made permitting the said defendants North American Oil Consolidated, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter Leimert, and Wickham Havens to prosecute their said appeal without joining the other defendants.

NOW, THEREFORE, IT IS HEREBY STIPULATED that such an order may be made; and it is further stipulated that notice to appear on the application for order allowing appeal be, and the same is hereby waived. [95]

ANDREWS, TOLAND and ANDREWS,
Attorneys for Defendants Union Oil Company of California and Producers Transportation Company.

J. D. LEDERMAN,
Attorney for Defendant Pioneer Midway Oil Company.

A. L. WEIL,
U. T. CLOTFELTER, and
CHARLES S. WHEELER and
JOHN F. BOWIE,
Attorneys for Defendants North American Oil Consolidated, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter Leimert, and Wickham Havens.

Pursuant to the foregoing stipulation, IT IS HEREBY ORDERED that North American Oil Consolidated, Walter P, Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter Leimert, and Wickham Havens, defendants above named, be allowed to prosecute their appeal alone, without joining the other defendants.

Dated March 3, 1916.

M. T. DOOLING,
Judge.

[Endorsed]: Original. No. A–48—Equity. In the United States District Court for the Southern

District of California. United States of America, Plaintiff, vs. North American Oil Consolidated et al., Defendants. Stipulation on Severance. Filed Mar. 4, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Charles S. Wheeler, Attorneys for Defendant, North American Oil Consolidated, Union Trust Building, San Francisco. [96]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–48—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFORNIA, PRODUCERS TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,

Defendants.

Petition for Appeal and Order Allowing Appeal.

To the Honorable Court Above Named:

North American Oil Consolidated, a corporation, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert, and

Wickham Havens, defendants in the above-entitled action, considering themselves aggrieved by the order made and entered in the above-entitled cause on the 3d day of February, 1916, by which said order or decree a Receiver was appointed, said order being an interlocutory order or decree appointing a Receiver, hereby appeal from said order or decree to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, for the reasons specified in their Assignment of Errors filed herewith, and pray that their appeal may be allowed, and that a transcript of the record, proceedings and papers upon which such decree was made and entered as aforesaid, duly authenticated, may be sent to the United States Circuit [97] Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

And your petitioners further pray that the proper order touching the security to be required to perfect their appeal be made.

A. L. WEIL,
U. T. CLOTFELTER,
CHARLES S. WHEELER and
JOHN F. BOWIE,
Solicitors for Said Defendants and Appellants.

Order Allowing Appeal.

The foregoing petition for appeal is hereby granted and allowed, and the bond on appeal to be given on behalf of the above-named appellants is hereby fixed at Five Hundred Dollars, to be conditioned according to law.

Dated March 3, 1916.

M. T. DOOLING,
Judge.

Due service and receipt of a copy of the within Petition for Appeal this 3d day of March, 1916, is hereby admitted.

E. J. JUSTICE,
ALBERT SCHOONOVER,
A. E. CAMPBELL,
FRANK HALL,
Attorneys for Plaintiff.

[Endorsed]: Original. No. A–48—Equity. In the United States District Court for the Southern District of California. United States of America, Plaintiff, vs. North American Oil Consolidated, et al., Defendants. Petition for Appeal and Order Allowing Appeal. Filed Mar. 4, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. U. T. Clotfelter, [98] A. L. Weil and Charles S. Wheeler and John F. Bowie, Attorneys for Defendant, North Am. Oil Cons., Union Trust Building, San Francisco. [99]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–48—EQUITY.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFOR-

NIA, PRODUCERS TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,

Defendants.

Assignment of Errors.

Now come the defendants North American Oil Consolidated, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens, by their solicitors A. L. Weil, Esq., U. T. Clotfelter, Esq., and Charles S. Wheeler and John F. Bowie, Esqs., and aver that the interlocutory decree entered in the above-entitled action on the 3d day of February, 1916, to wit, the interlocutory decree appointing a Receiver, is erroneous and unjust to the said defendants, and file with their petition for appeal from said decree the following Assignment of Errors, and specify that said decree is erroneous in each and every of the following particulars, viz:

I. The District Court of the United States, for the Southern District of California, erred in appointing a Receiver upon the pleadings, evidence and proofs before the Court.

II. The District Court of the United States, for the Southern District of California, erred in appointing a Receiver in this action, for the reason that no right to the possession [100] of the real property involved is shown to be in plaintiff, and plaintiff did not show any probability that plaintiff was entitled to or would or could recover said real property or

the possession thereof, and that the appointment of a Receiver herein under the circumstances appearing is not in conformity with the rules and principles of equity.

III. The United States District Court for the Southern District of California erred in appointing a Receiver, for the reason that each quarter section of the section of land in controversy was on the 27th day of September, 1909, covered by a placer mining location or claim, which location or claim on said date belonged to the predecessor in interest of these defendants; that said locations or claims were on said 27th day of September, 1909, valid and existing locations or claims within the meaning of the President's withdrawal order of said date; that on said 27th day of September, 1909, the predecessor in interest of these defendants was in the actual, exclusive and peaceable possession of the lands embraced in said respective locations or claims, and on said date was diligently engaged in the prosecution of work leading to a discovery of oil or gas on said locations or claims; that said work was at all times thereafter duly and diligently prosecuted by said predecessor and by these defendants, and resulted, long prior to the commencement of this action, in the discovery of oil on each of said claims or locations, thereby perfecting the same under the laws of the United States as placer mining claims; that defendant North American Oil Consolidated is in possession under a valid agreement for the purchase of said mining claims and that the plaintiff has shown no equitable right or title whatever to said property

or any part thereof, and the appointment [101] of a Receiver under the circumstances is not conformable to the practice and rules of equity.

IV. The United States District Court, for the Southern District of California, erred in appointing a Receiver, for the reason that the evidence before the Court makes it clear that on the 27th day of September, 1909, the predecessor in interest of these defendants was the *bona fide* occupant and claimant of all of the land in controversy; that said land was and is oil or gas bearing land; that on said day said predecessor was in diligent prosecution of work leading to discovery of oil or gas on each quarter section of land; that thereafter said predecessor and these defendants continued in diligent prosecution of work until gas and oil were discovered on each of such claims; that such discoveries were made long prior to the commencement of this action; that these defendants have ever since continued to occupy and claim all of said lands and have continued in the diligent prosecution of work thereon; that plaintiff has no equitable right or claim whatsoever to said lands or any part thereof, and that the appointment of a Receiver under the circumstances is not in conformity with the rules and practice of courts of equity.

V. The District Court of the United States, for the Southern District of California, erred in treating the complaint as an affidavit and in considering the alleged facts therein set forth as evidence of a probable or any right in plaintiff, for the reason that said complaint was not so verified that the same could be

used for such purpose, inasmuch as it appears that the affiant had no personal knowledge of any facts alleged which facts if true, would tend to destroy the validity of the titles, rights, interests or claims of these defendants in and to said land, but [102] that such allegations are mere heresay based upon the statements and examinations and affidavits of third persons.

WHEREFORE, appellants pray that said interlocutory decree be reversed, and that said District Court for the Southern District of California, Northern Division, be ordered to enter a decree reversing the decision of the lower court in said action.

A. L. WEIL,
U. T. CLOTFELTER,
CHARLES S. WHEELER and
JOHN F. BOWIE,

Solicitors for Defendant and Appellants North American Oil Consolidated, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens.

Due service and receipt of a copy of the within Assignment of Errors this 3d day of March, 1916, is hereby admitted.

E. J. JUSTICE,
ALBERT SCHOONOVER,
A. E. CAMPBELL,
FRANK HALL,
Attorneys for Plaintiff.

[Endorsed]: Original. No. A–48—Equity. In the United States District Court for the Southern

District of California. United States of America, Plaintiff, vs. North American Oil Consolidated et al., Defendants. Assignment of Errors. Filed Mar. 4, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. U. T. Clotfelter, A. L. Weil and Charles S. Wheeler, John F. Bowie, Attorneys for Defendant, North American Oil Consolidated. Union Trust Building, San Francisco. [103]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–48—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFORNIA, PRODUCERS TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Massachusetts Bonding and Insurance Company, as surety, is held and firmly bound unto United States of America in the sum of

Five Hundred and 00/100 ($500) Dollars, lawful money of the United States, to be paid to said United States of America; to which payment, well and truly to be made, we bind ourselves, and our successors, by these presents.

Sealed with our seal and dated this 3d day of March 1916.

WHEREAS, the above-mentioned North American Oil Consolidated, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert, and Wickham Havens have obtained an appeal to the Circuit Court of Appeals of the United States, to correct or reverse the order or decree of the District Court of the United States, for the Southern District of California, in the above-entiled cause. [104]

NOW, THEREFORE, the condition of this obligation is such that if the above-mentioned parties shall prosecute their said appeal to effect, and answer all costs if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

MASSACHUSETTS BONDING AND INSURANCE COMPANY.

By FRANK M. HALL,

By S. M. PALMER,

Attorneys in Fact. (Seal)

The within bond is approved both as to sufficiency and form this 3d day of March, 1916.

M. T. DOOLING,

Judge.

[Endorsed]: No. A–48—Eq. In the United States District Court for the Southern District of California. U. S. of America, Plaintiff vs. North American Oil Consolidated et al., Defendant. Bond on Appeal. Filed Mar. 4, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Charles S. Wheeler, Attorney for ————, Union Trust, Building, San Francisco. [105]

In the District Court of the United States, for the Southern District of California, Northern Division, Ninth Circuit.

No. A–48.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFORNIA, PRODUCERS TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,

Defendants,

Praecipe for Transcript on Appeal.

To the Clerk of the Above-entitled Court:

Please make up, print and issue in the above-entitled cause a certified transcript of the record, upon an appeal allowed in this cause, to the Circuit Court

of Appeals of the United States, for the Ninth Circuit, sitting at San Francisco, California; the said transcript to include the following:

Bill of Complaint;

Answer of Defendants North American Oil Consolidated, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert, and Wickham Havens;

Notice of Motion for Receiver and Restraining Order;

Order Directing the Appointment of a Receiver; **[106]** together with opinions in cases A–2 and A–38 referred to therein;

Order Appointing a Receiver;

Petition for Appeal;

Order Allowing Appeal;

Assignment of Errors;

Bond on Appeal;

Citation;

Stipulation on Severance;

Notice of Lodgment of Statement of Evidence;

Statement of Evidence on Appeal;

Praecipe for Transcript on Appeal.

You will please transmit to the Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, the said record when prepared, to-

gether with the original citation on appeal.

U. T. CLOTFELTER,
A. L. WEIL,
CHARLES S. WHEELER and
JOHN F. BOWIE,

Solicitors for Said Defendants and Appellants North American Oil Consolidated, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens.

Due service and receipt of a copy of the within Praecipe for Transcript, this 15th day of March, 1916, is hereby admitted.

E. J. JUSTICE,
ALBERT SCHOONOVER,
A. E. CAMPBELL,
FRANK HALL,
Attorneys for ————.

[Endorsed]: No. A–48—Equity. In the United States District Court for the Southern District of California. United States of America, Plaintiff, vs. North American Oil Consolidated et al., Defendants. Praecipe for Transcript on Appeal. **[107]** Filed Mar. 16, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. U. T. Clotfelter, A. L. Weil, Charles S. Wheeler, and John F. Bowie, Attorneys for Defendant North American Oil Cons., Union Trust Building, San Francisco. **[108]**

[Certificate of Clerk U. S. District Court to Transcript of Record.

In the District Court of the United States, in and for the Southern District of California, Northern Division.

IN EQUITY—No. A–48—EQ.

THE UNITED STATES OF AMERICA,

Complainants,

vs.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFORNIA, PRODUCERS TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,

Defendants,

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing one hundred eight (108) typewritten pages, numbered from 1 to 108, inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Bill of Complaint, Answer of Defendants, North American Oil Consolidated et al., Notices of Motion for Receiver and Restraining Order, Order Directing Appointment of Receiver, Order Appointing Receiver, Notice of Lodgment of

Statement of Evidence, Statement of Evidence on Appeal, Stipulation on Severance, Petition for Appeal, and Order Allowing Appeal, Assignment of Errors, Bond of Appeal and Praecipe for Transcript on Appeal, all in the above and therein entitled action, also of the Opinion of the Court in case A–2—Equity, referred to in the Order Directing Appointment of Receiver in this cause, and of the Opinion of the Court in case A–38—Equity, referred to in the Order Directing Appointment of Receiver in this cause, and that the same together constitute the Record [109] on Appeal herein, as specified in the aforesaid Praecipe for Transcript on Appeal, filed in my office on behalf of the appellants by their solicitors of record.

I do further certify that the cost of the foregoing record is $52.90, the amount whereof has been paid me by North American Oil Consolidated, a corporation, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens, the appellants herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Northern Division, this 28th day of April, in the year of our Lord one thousand nine hundred and sixteen, and of our

Independence, the one hundred and fortieth.

[Seal] WM. M. VAN DYKE,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By Leslie S. Colyer,
Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled 4/28/16. L. S. C.] **[110]**

[Endorsed]: No. 2789. United States Circuit Court of Appeals for the Ninth Circuit. North American Oil Consolidated, a Corporation, Walter P. Frick, John F. Carlston, Clarence J. Berry, Dennis Searles, Walter H. Leimert and Wickham Havens, Appellants, vs. The United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed May 1, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

[Stipulation and Order Extending Time to May 1, 1916, to Prepare and File Transcript of Record on Appeal.]

In the District Court of the United States, for the Southern District of California, Northern Division.

No. A–48—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORTH AMERICAN OIL CONSOLIDATED et al.,

Defendants,

IT IS HEREBY STIPULATED that the appellants herein may have to and including the first day of May, 1916, within which to prepare and file their Transcript on Appeal in the above-entitled proceeding.

Dated April 15th, 1916.

E. J. JUSTICE,
A. E. CAMPBELL,
FRANK HALL,
Solicitors for Plaintiff.

It is so ordered.

WM. W. MORROW,
Judge.
United States Circuit Judge Ninth Judicial Circuit.

[Endorsed]: No. A–48. In the United States District Court for the Southern District of California. United States of America, Plaintiff, vs. North

American Oil Consolidated et al., Defendants. Stipulation.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Stipulation and Order Under Rule 16 Enlarging Time to May 1, 1916, to File Record Thereof and to Docket Case. Filed Apr. 15, 1916. F. D. Monckton, Clerk.

[Order Extending Time to June 1, 1916, to Docket Cause and File Record on Appeal.]

In the United States Circuit Court of Appeals, Ninth Judicial Circuit.

NORTH AMERICAN OIL CONSOLIDATED, PIONEER MIDWAY OIL COMPANY, UNION OIL COMPANY OF CALIFORNIA, PRODUCERS TRANSPORTATION COMPANY, WALTER P. FRICK, JOHN F. CARLSTON, CLARENCE J. BERRY, DENNIS SEARLES, WALTER H. LEIMERT and WICKHAM HAVENS,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Good cause appearing therefor, it is hereby ordered that the time heretofore allowed said appellants to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is

hereby enlarged and extended to and including the first day of June, 1916.

Dated at Los Angeles, California, March 13, 1916.

M. T. DOOLING,
U. S. District Judge.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. North American Oil Consolidated et al., Appellants, vs. United States of America, Appellees. Order Extending Time to File Record. Filed Mar. 20, 1916. F. D. Monckton, Clerk.

No. 2789. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to ——— to File Record Thereof and to Docket Case. Refiled May 1, 1916. F. D. Monckton, Clerk.